(1) Supreme Court, U.S.
FILED

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No. _____

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In the
Supreme Court of the United States
October Term 1999

DOROTHY SOO-KIU MOODY,
aka DOROTHY SOO-KIU LAM,
Petitioner,

vs.

RICHARD MOODY,Individually and as President or Former President of ALOHA CONFERENCING SERVICES INC., CABLE & WIRELESS INC

Respondent.

On Petition For Writ of Certiorari To The Supreme Court Of The State of Hawaii

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PETITION FOR WRIT OF CERTIORARI

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120 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did Lower Court, Intermediate Court of Appeal and Supreme Court of Hawaii **violated Petitioner's entitled fundamental Constitutional rights under Federal Constitution Amendment I,VII,V,XIV.** Should Petitioner be entitled to her due process right , right for equal protection of the law, right to petition for the redress of her grievance, right to a proper forum by jury trial in Civil Court, to adjudicate the material issue of facts and merits of her underlying claims of constructive fraud prior to divorce, as a sole individual, against business partner, seller Trustee, Corporate President and Director ,Richard Moody for collusion, unjust enrichment in fraudulent conveyance of the 90% stock sale of Aloha Conference Services Inc to Cable & Wireless Inc, in this business civil action. Independent from prior adverse rulings in Family Court post-divorce proceedings denying petitioner's fundamental constitutional rights to adjudicate and set aside the stipulated Divorce Decree which was induced by fraud.

2. Did State Tribunals in Family Court, Civil Court, Intermediate Court of Appeal and Supreme Court of Hawaii, **manifested personal biases and prejudice against Petitioner,** inconsistent continuing bad faith, continuing deprivation of Petitioner's fundamental rights, in continuing denying adjudication to merits of the substantive issue of frauddulent conveyance and security fraud, intentional suppression of evidence of damages from prior adverse prejudicial rulings. **Manifested invidious discrimination in partiality of decisions,** on basis of gender ethnic background , nationality, social, economic, political and governmental status, class of representation, violative to federal civil rights statutes under Title 42 USC Sec. 1983, Sec. 1986 .Resulted in gross fundamental-miscarriage of justice, incurred further irreparable injury detrimental to Petitioner's business equitable interest. Knowing full well, grant of just impartial rulings would

required lower court,Intermediate Court of Appeal and Supreme Court of Hawaii to confess under clear convincing evidence of mistake of judgments of denial in prior Family Court proceedings and in this business civil action.

3. Under Federal Civil Rights Statutes Title 42 USC Sec 1983 ,should a **divorced woman**, being a naturalized citizen, a Chinese of minority nationality , acting on her own behalf, be discriminated in State Courts proceedings, on the basis of gender ethnic bacground nationality, social, economic, political and governmental status, class of representation. Should she be entitled to equal right of protection of law for just equitable relief and due process right to be heard consistent with due process common law state statutes, right to an adjudicative forum for jury trial, right to petition for redress of her grievance ,consistent with the Federal Constitution , Amendment I, V, VII and XIV.

4. Under Federal Civil Rights Statutes Title 42 USC Sec 1983 , is a **person acting on her own behalf** is entitled to one's personal freedom of speech,in open court, to act on one's behalf without counsel ; is entitled to their personal freedom of press to publish their testimony and evidence in public court record, on one's own behalf .Is freedom to petition government for the redress of grievance, extend to person acting on her own behalf, without legal counsel, under the Federal Constititution **First Amendment** for the purpose of **equal protection clause**.

PARTIES TO THE PROCEEDING

The Parties are those named in the caption namely :

Petitioner, **DOROTHY SOO-KIU LAM** , also previously known as Dorothy Soo-Kiu Moody (hereinafter " **Dorothy**") a Hawaii resident ; a business partner with Richard Moody ; Corporate Vice-President and Secretary ; the equitable beneficial owner of the stock of Aloha Conferencing Service Inc., in Trust property of Declaration of Richard Moody Trust dated November 12, 1993.

Respondent, **RICHARD MOODY**(hereinafter "**Richard**") a Hawaii resident, seller trustee of Richard Moody Declaration of Trust ; Corporate President , Treasurer, Director, transfer agent of Aloha Conferencing Services Inc.

Corporate Defendant, **ALOHA CONFERENCING SERVICES INC. (hereinafter "ACS") a Hawaii Corporation,** a telephone conferencing service provider, by operator service from Hawaii, with remote technology conduct conferencing service at Los Angeles, Dallas, New York offices. ACS was issuer and transferor of 90% ACS stock sale on June 30, 1995.

CABLE & WIRELESS INC. (hereinafter "**CWI**") , **a British foreign Corporation ,** organized and existing under the laws of the district of columbia, authorized to do business in Hawaii, wholly-owned by Cable And Wireless plc , (NYSE : symbol as "cwp") one of the world leading international British telecommunication company and internet provider.

Cable & Wireless is the underlying long distance carrier for Aloha Conferencing Service who is also CWI's office tenant , with all ACS teleconferencing equipments co-located

at Cable & Wireless Inc's office at Los Angeles ,Dallas, New York, directly connected to CWI's fibre optic infrastructure , telecommunication network , in direct care of CWI under a office lease and equipments maintenance agreement.

ACS business operation generate more profit in long distance revenue to CWI than its net profit to ACS.

ACS is also a competitors to CWI who offer teleconferencing service to their customer, via another conferencing provider Darome who was acquired in1995 by MCI ,CWI's competitor . The same year ACS 90% stock was acquired by CWI. . CWI was the buyer and transferer of 90% ACS stock in the business sale transaction in June 30, 1995.

TABLE OF CONTENTS

Question Presented For Review. i

Parties To The Proceeding.....iii

Table of Content..... v

Table of Authorities..... viii

I JURISDICTIONAL STATEMENT..... 1

II. CONSTITUTIONAL AND STATUTORY PROVISION 2

III. STATEMENT OF FACTS.....2

A.. Background of Petitioner and Respondent.....2

B. Initiation of Corporate Security Fraud Perpetuated Further in Marital Fraud,in Divorce; Fundamental Miscarriage of Justice And Fed. Violation, A Result of Biases of Tribunals Invidious Discrimination Partiality In Rulings Against Dorothy On The Basis of Gender Ethnic Background Nationality Social Economic Political & Governmental Status, Prevailed Via Continued Deprivation of Fundamental Constitutional Right By State Court..... 5

IV. REASONS FOR GRANTING PETITION

1.1.Record Show Petitioner Who Is The Aggrieved Injured Deprived Party Was Stymied By Consistent Actual Biases & Prejudicel, Invidious Discrimination,Continued Bad Faith of State Court Tribunals, in Family Ct, Civil Ct,Intermediate Ct & Hawaii Supreme Ct Over The Past 4 Years in All Hearings in All Petitions,Both By Counsel

&By Herself As Pro Se, On The Basis of Gender,Ethnic Background,Nationality, Social, Economic, Political, Governmental Status.Judicial Misconduct Violate Federal Rights Is A Just Ground For Review 15

A. Evidence of Courtroom Biases, invidious Discrimination by Family Court and Civil Court..... 15

B. Hawaii Sup. Ct. and ICA Manifest Biases, Invidious Discrimination,Prejudice Against Dorothy, Partiality In Memorandum Opinion 12/29/1999 16

2. Fundamental Miscarriage of Justice, intentional Federal Violation To State Constitution Article I 2,3,4,5 and U.S.Constitution Amend.I,V,VII, XIV, A Result of Civil Court, Intermediate Court of Appeal, Hawaii Supreme Court,Not Enforce Due Process Right Not Enforce Equal Right For Protection,Not Enforce Right To Petition , Not Enforce Right For Jurial Trial..... 21

3. Decision of U.S. Supreme Court Prohibit State Judicial Authorities From Violation To Federal Constitution.al Right and Civil Rights;This Court And Congress Overriding policy Is To Seek Out Stae-Sanctioned Discrimination By State Actors And Eradicate It Whenever It Is Found 23

4. Petitioner Entitled For Review To Hawaii Supreme Court Final Judgment By U.S. Sup.Ct Under 28USC125 While This Case Involve Important Public Civil Right Issue Under 42 USC 1983 ;Fundamentak Miscarriage of Justice, Irreparable Injury Extraordinary Circumstances..... 24

5. Evidence of Futility And Exhaustion of State Remedies Continuing Intentional Bad Faith,Bias Of Tribunals,Stymied By State Proceeding/Rulings,Justify Immediate Federal Relief and Remedy Pursuant to 42 USC 1983..... 25

6. Danger Of Ireparable Loss Is Both Great & Immediate Justify Review For Immediate Relief And Remedies 26

7. Fundamental-Micarriage of Justice, Extraordinary Circumstance Existed, Resulted Constitutional Violation By Intentional Continuing Deprivation of Rights By All State Courts.Meet Requisite ForImmediate Fed. Relief & Remedies.....26

8.Federal Claim At Hand Is of Public Importance, Hawaii Ct's Historical Pattern of Bureacratic Personal Favoritism,Racial,Gender,Socio-economic,Class Discrimination Should Be Eradicated, Hawaii St Should Enforce Federal Rights..... 27

V. CONCLUSION..... 30

APPENDIX LIST..... .. .ia - iiia

APPENDIX A to APPENDIX.....1a - 103a

TABLE OF AUTHORITY

1. In the matter of the Trust created by Declaration of Trust William McBurney Dean, 47 Haw. 629, 394 P.2d 432..... 11

2. Plyler v Doe, 457 US 202,102 S Ct 2383, 72 L Ed 2d 786..... ... 15

3. Reitman v Mulkey, 387 US 369, 87 S.Ct. 1627..... 17

4. Morey v Doud, 354 US 457,77 S Ct 1344 1 L ED 2d 1485..... 17

5. Fre v Bland, 369 US 663, 82 S Ct 1089 ;8 L Ed 2d 180...20

6 . Paul v Paul , 9 Haw. App 176, 830 P.2d 1158(1992)..... 19

7. Kano v Kano, 8 Haw.App 172,799 P.2d 55 Cert.Denied,71 Haw.668,833 P.2d 900..... 19

8. Epp v Epp, 80 Haw 79, 905 P 2d 54 (1995).....21

9. Gaudio v. Gaudio ,23 Conn App287,580A 2d 1212 23

10.United States v Weems ,49 F 3d 528,534 (9th Cir)1995....22

11.Dorrance v Lee 90 Haw.149..... 22

12.Hall v State 7 Haw. App 274,281,756 P.2d 1048,1054 ...22

13.Bonder Tongue Lab. V University of Illinois Foundation , 402 US 313,91 S Ct 1434 ; 28 L Ed 2d 788..... 22

14.Holtz v Board of Comrs.(Ind) 560 NE2d 645 117 CCH LG 56464..... . 23

15.Mooney v Holohan 294 US 103 55 S Ct 340 98 ALR 406 ; 79 L Ed 791 24

16. Elks Nat. Foundation v Weber,C.A.9(Mont.) 1991, 942 F.2d 1480, certiorari denied 112 S.Ct 2995, 120 L Ed 2d 872. 24

17.Moore v Kirby,S.D.W.Va 1995, 879 F.Supp.592..... 25

18. Johnson v Zenon,C.A.9 (Or.)1996,88 F3d 828..... 25

19. Puchner v Kruzicki,E.D. Wis.1996, 918 F.Supp1271.....25

20. Tyler v Lark 472 F2d 1077,cert.den.(1973) 414 US 864, 38 L Ed 2d 84,94 S Ct 114..... ... 25

21. Richardson v McKnight (1997) US, 138 L Ed 2d 540.... 25

22. Young v Harris 401 U.S. 37 , 91 S Ct 746, 27 L Ed 2d 669 (1971)..... . .. 26

23. Huffman v Pursue 420 US 43 L Ed 592, 482, 95 S Ct. 1200 (1975)..... 26

24. J.E.B. v Alabama ex rel T.B. 511 US ,128 L Ed 2d 89 , 114 S Ct 1419 (1994) .....24 , 27, 28

25. Edmonson V Leesville Concrete Co. 500 US, 114 L Ed 2d 660,111 S Ct 2077..... 27

26. Paimore V. Sidoti, 446 US 429, 104 S.Ct 1879, 80 L Ed 2d 421 (1984)..... 28

UNITED STATES CONSTITUTION

1. Amendment I..... 2, 23 ,24
2. Amendment V.....2, 23 ,24
3. Amendment VII .....2, 23 ,24
4. Amendment XVI..... 2, 23 ,24

5. Article VI [2].....2, 23 , 24, 25
6. Article VI [3] ..... 2, 23 , 24

7. 15 U.S.C. 78cc Exchange Act 1934... 1, 23, 25
8. 15 U.S.C. 77n Securities Act 1933 ....1, 11, 23, 25
9. 28 U.S.C. 1275(a)..... 1, 24
10. 42 U.S.C. 1983..... 1, 23 , 24, 25
11. 42 U.S.C. 1986 .....1, 23, 24, 25

HAWAII CONSTITUTION

1. Article I Sec 2.....2, 21 , 23
2. Article I Sec 3.....2, 21 , 23
3. Article I Sec 4.....2, 21, 23
4. Article I Sec 5..... .....2, 21, 23

HAWAII REVISED STATUTE

1.Hawaii Revised Statute Section 417 E.....2, 9, 10

2.Hawaii Revised Statute 415.....2, 7, 10, 11

3.Hawaii Revised Statute 425D..... 2, 14

4. Revised Statute:Section.485-25.....2, 9, 10

5.Hawaii Revised Statute: Section 554B.....2, 3, 10

6. Hawaii Revised Statute556.....2, 10

7. Hawaii Revised Statute554C.....2, 7

8. Hawaii Revised Statute 572-22..... 2, 14, 21, 22

9. Hawaii Revised Statute 572-26..... 2, 14, 21, 22

9. Hawaii Revised Statute 572-28..... .. ...2 , 14, 21, 22

10. Hawaii Revised Statute 580- 47 ..... 2 , 16, 19, 21

11. Hawaii Revised Statute580-56.....2.,16, 19

12 .Hawaii Revised Statute 601-7(b)..... .....2 , 14

13. Hawaii Revised Statute 607-14..... ..... .2, 23

14. Hawaii Revised Statute 634 J..... 4

15. Hawaii Revised Statute 656..... 2, 4

16. Hawaii Revised Statute 651 C.....2, 10

17. Hawaii Revised Statute 708-880..... 2 , 9

REGULATORY

1. Hawaii Family Court Rules: 60 (b) 2,13, 16, 20

2. Canon 3.....2, 3 , 23

3. Restatement (Sec.) Of Judgments Sec 27(1980)....21

PETITION FOR WRIT OF CERTIORARI

Petitioner, DOROTHY SOO-KIU LAM (aka DOROTHY SOO-KIU MOODY) respectfully prays that a Writ of Certiorari issue to review the final judgment of the Supreme Court of the State of Hawaii, entered on February 8, 2000 *(App.A3 3a)*

OPINION BELOW

There is no opinion issued by the Supreme Court Of State Of Hawaii. **2/22/2000 Order***(App.A1 1a)* Denying Stay of Judgment Pending U.S. Supreme Court Appeal.

2/ 8/ 2000 Order*(App.A3 3a)* Denying discretionary review to the timely Application For Writ of Certiorari on S.C.No22372 to Intermediate Court Of Appeals, **Memorandum Opinion Dec 29, 1999** *(Ap B3 6a)*.

Affirming Civil Court, April 29,1999 Final Judgment *(App.C1 24a)*. Dismissing with prejudice. Petitioner's substantive underlying civil Corporate claim of security fraud, fraudulent conveyance of 90 % stock sale of Aloha Conferencing Service Inc, to Cable & Wireless Inc at 4 Million (5 months prior to divorce) **Oversold 50% or more in stock shares**; undersold $5 Millions or more in stock price; with misrepresentation,concealment and omission of Petitioner's authorization; with **ineffective title of security** transferred; for unjust enrichment, by Millions, to Corporate Respondents .In this action, Petitioner was discriminated by retaliation with $72,798.72 in fees/costs for unjust enrichment to Respondents . Petitioner this Corp.claim, was precluded on jurisdictional ground of res judicata and collateral estoppel. By the stipulated settlement in **divorce decree (12/11/95)***(56a)* induced by fraud, consented by Family Court. Barred by prior adverse prejudicial **Family Court post divorce Order 7/5/96***(54a)*, **8/12/96***(53a)* (6 months after divorce) affirming validity of divorce settlement, affirmed in prior Intermediate Court of Appeal**1/30/98 Order***(45a)*, Supreme Court **3/12/98 Order***(44a)* on S.C No.20085, 20021,20195.**(Ap.D5-D7 54a)**

I. JURISDICTIONAL STATEMENT

Jurisdiction of this Court, invoked under 28 U.S.C. Sec 1257(a); 42 U.S.C. Sec 1983 ; 42 U.S.C Sec 1986.

II. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal governing law, set forth in the Appendix E :

Federal Constitution and Statutes (AppE1 70a) : Amendment I (freedom of speech ,right to petition government); Amend. V (equal right of protection ,inhibit invidious discrimination); Amend. VII (right to jury trial); Amend. XIV(due process right for protection of laws); Articles VI[2] (Supreme Law Of the Land); Article VI[3] (judicial Officers, bound by Oath to support the Constitution); 28 U.S.C.1257(a);42USC.1983, 1986 ;15 US.C78cc;15 USC77n **Constitution of State of Hawaii(App E2 73a)**: Article I Sec 2 (Rights of Individual); Article I Sec 3 (Equality of Rights); Article I Sec 4 (Right of Freedom of Speech & Petition); Article I Sec 5(Due Process Right & Equal Protection); **Hawaii Revised Statutes (AppE3 74a to 83a)** HRS651C(Uniform Fraudulent Transfer Act);HRS 485-25 (Uniform Securities Act); HRS 417E (Corporate Take-Overs);HRS554B(Uniform Custodian Trust Act); HRS 556 (uniform Fiduciaries Act) Uniform Prudent Investor Act HRS 554C ; HRS 580-47 (Property Division) ; HRS 580-56(Finality) HRS572-22(Contract); HRS572-26(Personal Trustee); HRS 572-28 (Suit) ; HRS 425D (Uniform Partnership Act) ; HRS 415 (Hawaii Business Corporation Act) ; HRS 607-14 (Attorney fee and Cost); HRS 601-7(b) (Disqualification) **Regulatory(ApE4 80a**)Hawaii Family Court Rule 60(b) ; Canon3(B) (Adjudicative Responsibility),Canon 3(E)

III. STATEMENT OF FACTS

A. BACKGROUND OF DOROTHY & RICHARD

(a) Petitioner: Dorothy Soo- Kiu Lam (aka. Dorothy Soo-Kiu Moody), a Chinese **oriental woman** of a **minority** group Chinese was her primary language and mother tongue, a **naturalized** citizen (since 1990) from Hong Kong, born and raised under the governmental oppressive colonial power, overruling public/civil interest for the benefit and economic gain of great Britain. Where she was conditioned to inequality and injustice as a fact of life, where oriental woman was trained

to be subservient inferior to men, in Chinese tradition. Though naturalized, suddenly raised to the rank of citizenship was unable to command respect and the equal right from man of superior intelligence experience and educatedness of the U.S. born , like her ex-husband Richard .Dorothy in her initial cultural handicap and ignorance, **especially needed equal protection** of the laws against unjust abusive domination, from being deprived ,undue influence & **duress**.

The reality of governmental oppressive power is ever more real to her in real life experience ,in America, the most materially prosperous, most technologically advanced country, the only Democratic nation on earth founded upon a national Constitution arisen victorious over the spirit of colonial oppressed domination, to acclaim right for Liberty and Independence. Where equality civil, constitutional right are known to be a fact of life.

Petitioner was initially represented by counsel Mr. Ronald Au in this civil Corporate action (12/15//96 - 9/5/98) which was dismissed with prejudice on summary judgment on jurisdictional ground of Res Judicata .Given the difficult challenge, asserting biases of tribunals and request for disqualification of judges is an unpopular unfavorable action for attorney who are likely to be before the State judges numerous time for other clients in other cases.

Upon termination of counsel ,Petitioner went on Pro Se, request disqualification of Judge Chang (11/98),which was denied. Throughout Petitioner Pro Se's 60(b) Motion for equitable relief from mistake of judgments,request injunction restrain deposit of stock in court (3/8/99) which was denied by Judge Chang. Dorothy appeal Pro Se in Open Brief to Intermediate Court of Appeal(hereinafter"ICA") ; appeal Pro Se in Writ of Certiorari to Hawaii Supreme Ct (1/28/2000).

Consistent arguments was made, in Civil Court, ICA , Supreme Court, on (i) evidence of genuine material issue of facts of fraudulent conveyance, security fraud, where Family Ct. do not have jurisdiction (ii) Statutory violation in fraud , deceptive trade practice (iii) inapplicable principal of res

judicata /estoppel based on mistake of prejudicial ruling, in prior Family Court action, absent adjudication to merits (iv)factual evidence of federal violation in personal biases, partiality (Brief P1,10,Writ P2,9) (v)Legal ground of federal violation to fundamental State& Federal constitutional rights(Bf35Wr12) (Open Brief hereinafter"Bf; Writ as"Wr")

Petitioner was previously represented by counsel Mr. Richard Lee in prior (I) Family Court 60(b)Motion to set aside unconscionable agreement in Divorce Decree Stipulation on ground of duress and fraud (6/96) , and (ii) in Motion for increase child support (6/96) and in opposition to change of custody (6/96) and (iii) in custody trial (8/96). Above Family Court proceedings and its appeals represented by counsel were all ruled in partiality, prejudicial against her .

In subsequent custody proceedings ,by Dorothy Pro Se Family Ct , ICA and Supreme Court (S.C.No.20783, 20946, 21101)further denied Dorothy(i) Denied modification of visitation/custody (ii)Denied enforcement of counseling, medical care for minor children(iii) Prohibit Dorothy filing new motion on her own behalf on enforcement/modification of custody matter, under "Vexatious Litigant" Statutue HRS634J.All these rulings previously appeal to US Supreme Court No.99M21,discretionary review denied on 10/4/99.

(b) <u>Respondent</u> :Richard Moody, **Caucasian,** born and raised in Tennessee.(previous social study revealed Respondent was a abused child himself, sexually molested ,physically abused battered by heavily alcoholic father, since childhood to teenage) Respondent prevailed in a successful career hold **afluential governmental political & social affiliation** ,was appointed by Governor, holding public service as **Chairman** in the state agency, High- Tech Committee Corp. (Family Court Hearing Tr 7/7/97- P52 L5-9) He is to promote high tech-telecommunication business in Hawaii. He was elected **Small Business man of the year for 1996** He is the President of Aloha Conferencing Service Inc (hereafter "ACS"), the only teleconferencing company in Hawaii , with State funded capital loan made successful.

- At all time Richard Moody was represented in Family Court proceedings by **Caucasian Counsel** Mrs. Susan Liu who has strong social political **governmental affiliation** via her husband Michael Liu, a State senator who had campaigned for Lieutenant Governor (9/98). Richard Moody via his counsel in Family Court , procured and prevailed in favor for him , grant of all motions , fees/costs award, in all rulings of Family Court proceedings. And, all favor for him, in all rulings of appeals from Intermediate Court of Appeal and Hawaii Supreme Court. At all time, in this civil corporate action, Richard is represented by counsel, Mr. Stephen Hioki, who has procured and prevailed in favor for him in Summary Judgment dismissing the claim with prejudice, on res judicata principal,and fees/cost award. Whereas Cable& Wireless Inc (hereafter"CWI") , at all time was represented by counsel Mr. Chris Cole, prevailed in favor, in Summary Judgment and Fees/costs award, by enjoining Richard Moody as a privy ,on the same ground of arguments.

B. Corporate Security Fraud Perpetuated into Marital Fraud , in Divorce ; Fundamental Miscarriage of Justice And Federal Violation, A Result of Biases of Tribunals, Invidious Discrimination Partiality In Rulings Against Dorothy ; On The Basis of Gender Ethnic Background Nationality Social Economic Political & Govt. Status ; Prevailed Via Continued Deprivation of Fundamental Constitutional Rights and Civil Rights By State Actors

(a)Dorothy ,Richard was Business Co-Partner

Married on May 15, 1986. Has 2 children. For any new business to survive, financial resources is a critical factors for survival and ultimate success. ACS would not have existed were it not for Dorothy who invested 75% substantial start up "seed money", her consistent strong faith and believe in ACS. Otherwise, Richard would not have been able to sustain a self employed proposition as a successful business owner, partake in an newly emerging fast growing high technology telecommunication industry. ACS is the 1st conferencing company ever established & made successful in Hawaii.

(b)Dorothy's Cash Investment In Record. Evidence of partnership shareholder agreement as equitable owner by her legal substantial consideration invested (Bf-6;Wr-2)

It was only after:[(i)Dorothy's personal guarantee co-signing (1/25/1989) a $200,000 State capitol loan.(ii)She being a real estate agent personally negotiated an office lease (iii)Providing sufficient fund from source of her pre-marital asset, including approx $30,000 investment (1/27/189)for office design multi-line telephone infrastructure ,construction, $20,000 thereafter (iv)She (not Richard) paid for $35,000 cash capital for 700,000 shares of ACS common stock ($0.05/share) on 2/22/1989.] That ACS was able to become operational, officially on May 15, 1989, with 3 employees.

(v)ACS incurred $200,000 loss in the 1st 12 months. Fortunately Dorothy were able to contribute sufficient cash $100,000 or more for advertising campaign, and the purchase of the most advance cost effective computer, remote technology conferencing equipments , to be co-located in CWI's mainland office , directly connected with CWI fibre optic telecommunication network, by pass the ineffective satellite disturbance in the Hawaii network. ACS manage to survive , turn profitable in 18 month, with total asset $1/2Million. Sustained enormous growth there after (vi)As ACS grow and expand, Dorothy raised additional capitol fund by home equity refinancing (total$200,000) which is an expert of her trade (vii)She also contributed as employee for ACS received W2 wages income 1992 to 6/1995 (viii).Re-invested all retained earnings into ACS(90 to 95)(ix)Jointly paid ACS tax89 to 95

By June 30, 1995 ACS assets approx $1.8 Millions. Shareholders retained earnings approx.$1 Million; net profit $1/2 Million/year; generate $1 Million long distance income for CWI ; Business Revenue $4 Million; approx 50 employees.

(c) Dorothy Is The Constructive Shareholder,Co-Partner since 7/88; The Primary Co-Beneficiary Owner, Holder of ACS Stock in Richard Moody Declaration of Trust,In record Since 11/93 (Bf-6;Wr-2) :ACS incorporated in 7/21/1988, was in desparation for capital in 1988, not until

Dorothy fund become available on 1/4/89,from an auto insurance settlement,happened prior to marriage.Richard was President and Treasurer, Dorothy was Secretary &Vice President, an officer of the Board of Director, has voting right While 700,000 shares in Richard name, promised (with bad faith) to held for the benefit of Dorothy for her 75% shares.

In an estate planning 11/93 for the benefit of Dorothy 700,000 shares was held in the title of(RA V7 P110-155) "Richard A .Moody, Trustee of Richard A. Moody Trust Agreement" Richard was sole Trustee,(preluded Dorothy as co-trustee)Dorothy was co-beneficiary owner with Richard, as husband and wife ,by tenancy of entirety , with right of survivorship to Dorothy. The Richard Moody Declaration of [1] Trust , recorded in Bureau of Conveyance 11/23/93

CWI has full knowledge, was officially notified in receipt of the Trust Agreement and stock record,(RA V7 P 156-7) Certificate #2 , Article of Incorporation, By law Subscription Agreement, and all accounting record, in a 4 months study.

CWI was aware Dorothy is equitable owner , primary co-beneficiary and know Richard has the fiduciary duty to prudent care of trust assets (under Uniform Prudent Investor Act HRS 554C),duty to obtain Dorothy written authorization full disclosure to her , under Uniform Custodian Trust Act. HRS554B-71 (General Management Duties of Custodian Trustee), and under Hawaii Business Corporate Act, HRS 415-73 (Approval by Shareholder for merger); HRS415-34 (Voting Trusts and Agreement Among Shareholder)

(e) 6/30/1995,Fraudulent Conveyance of 90% ACS sale at $4 Millions , undersold $5+ Millions in price, oversold 50% + stock shares & Asset(Bf-8;Wr-2):(See Note 2 P8)

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1. **Wr-2 ; Bf-6**: [(RA V3 P86) Richard A. Moody Trust Agreement Nov.12, 1993 Pg 2: "The Trustee shall distribute ... net income and principal... for the health , support in reasonable comfort, best interests and welfare of my spouse ,DOROTHY S.K. MOODY , and me" Pg4 (A). Allocation to Family Trust: "If my spouse, Dorothy S.K Moody survives me, the trustee shall as of the date of my death, set aside out of trust principal ....named the Family Trust the largest amount."]

BEST AVAIL

(i)Richard sold 90% ACS stock, at approx $4 Million [1]. Both Defendants known the true fair market value was $10 Millions was intended for merger for long term partnership (not an outright 100% sale), was intended for 60% sale at $6 Millions , (not 90% for 4 Millions) was intended for ACS stock exchange to CWI stock for tax advantage

(ii) Sale include a Shareholder Agreement for 10% buy out option at minium $1million price or more at set formula based on annual profit ,with option to exercise **any time**.
(This serve no prudent profitable purpose ,meaningless, for

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1. **Bf-8;Wr-2:** [(RA V7 P186) Richard Moody letter dated 3/12/95 to CWI Scott Yancey : "I believe my company should be valued at **2 times** its current annual sales. My monthly volume would suggest that **Ten Million** dollars is a fair estimate... I would like to agree upon a formula to be used to determine the value of the **remaining 40%**.I would request $1.1 Million in cash, which represents total after tax equity in Aloha Conferencing, and the balance of the sale price, in CAI common **stock in exchange** for Aloha Conferencing stock."

2. **Motive and Clear Opportunity for Unjust Enrichment By CWI And Richard as Trustee& President**

ACS had rejected 100%sale for $4 Million, solicitated by Southern New England Telecom12/92. ACS rejected CWI 100%sale offer 12/93

Richard, controlling partner benefitted from control to Dorothy's equitable interest. In fear of loss of that benefit, seek to converted her 75% shares solely to his own. Knowingly abuse his fiduciary, defraud against Dorothy, colluded with, bribed by CWI, to her detriment, upon distribution and sale of her stock, for his unjust enrichment for a Million.

Whereas, CWI a long distance carrier to ACS, had enjoyed Millions in long distance income profited from ACS operation. In fear to the loss of that benefit to their competitor in acquisition to ACS. Solicitated ACS for an outright 100% $5 Million buy out, in disguise for a merger of partnership at 90% stock sale, for the unjust enrichment by Millions, to prelude fair competition to ACS acquisition by competitor, upon the desperation, in need ,for a new conferencing provider,when Darome buy by MCI in 1995.

CWI inflame Richard with the fuel of selfish obsessive money greed ,over the love for his family. A scheme to serve the interest of corporate commercial competition. Became a curse for the tragedy of Dorothy and her children,resulted in a broken family.The animal of money greed, domination control for selfish gain, latent in CWI and Richard's unpure heart,seized it's opportunity,in no time.Righteousness, honor are of no value, over gold.

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intended business merger, for growth & appreciation, amount to an 100% outright sale at $5 Million, and a wash sale) (Bf-8)

(iii) Sale include an Employment Contract **unjustly enriched to Richard alone** (none for Dorothy)with guarantee minium **$1 Million** prospective value payable in full upon termination (or upon exercise of 10 % buy out) (Bf-8)

[2] CWI know full well, Dorothy (not Richard alone) is entitled to employment benefit/dividend, as equitable owner. Unequal treatment to shareholders would violated Uniform Securities Act HRS 485-25&Corp. Take-Over HRS 417E- 4.

Said deceptive trade conduct by CWI also amount to bribery , in violation to HRS 708-880 (commercial Bribery) .It amount to a fraud and deceptive scheme , to control and participate in breach of fiduciary ,inducing Richard's breach of fiduciary, to Dorothy's detriment, by omission of her written authorization, non disclosure, misrepresentation, concealment; by fraudulent conveyance, with ineffective title of securities, with mutual understanding by CWI and Richard that his personal benefit in $1 Million would be cashed in sooner, upon the termination of employment at time of 10% buy out..

On June 30, 1995, Richard misrepresented to Dorothy that 90% sale was a good deal. That the remaining 10% be exercised after 5 years. Its value be minium $10Millions +. And that CWI did not required her signature on the documents.

The 90% stock sale , represent to CWI a guarantee 100% return in capital in less than 2 yrs for CWI's $4 M (ACS assets$1.8 M.+Long Distance income $1 M + ACS

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2. **Bf-8;Wr-2:** [(RA V7 P188-9) Employment Contract Pg1-2: "2.The term of this agreement shall be for five years..5a. In addition, Richard Moody shall **receive the unpaid balance of base salary for any remaining term of this Agreement, as severance , for termination**..... 5f.In addition to his base salary, RM shall be entitled to an annual performance bonus which shall be equal to 10 % of the amount of net income before income taxes of company.....5g. In the event that RM's annual compensation consisting of base salary plus bonus is less than $200,000, then the company shall pay RM the difference"]

Evidence in Record show [CWI Scott Yancey letter 4/7/95 to Richard "I recall your estimating an approx $250K package for **you and your wife's employment.**"]

Profit$1/2M.=$3.3M.). It need no expert to see that it seriously undersold ACS true marketable intrinsic value (5M+), oversold in ACS stock shares(50%+). As compare to ,if ACS sold to other long distance carrier ,CWI would lost $1 Million long distance income/yr. It represent to ACS a " wash sale " with no profit, serve no,meaningful business purpose ,with great loss in tax structure(Asset $1.8 M + Net Profit $1/2 M= $2.3 M almost equal to $4M -$1.2 M tax =$2.8 M) .(See Bf-8 ;Wr-2)

Testimony in record show, Expert opinion by Mr Candon evaluate the 90% acquisition of ACS represent an intrinsic investment value to CWI of **$13 Million**, based on ACS documents obtained from CWI during this civil action(*Bf-8*)

(f)Fraudulent Conveyance In Intentional Concealment Non-disclosure, Misrepresentation Omission of Dorothy Written Authorization , Preclusion of her Knowledge For Unjust Enrichment of CWI & Richard: In particularly, the terms and conditions of 90% sale &10% buy out agreement and employment contract was not disclosed, unknown to Dorothy. The sale was transacted without Dorothy written consent (primary co- beneficiary owner of express trust 11/93 & constructive shareholder, co- partner since 7/88),without Corporate resolution in violation to Corp.Charter (Dorothy approval as Corp. Secretary & Vice President, Board member is required per Corp Charter) ,in violation to HRS415-73(Approval of Shareholders for merger),HRS556-3(transfer of Negotiable Instrument by Fiduciary);in violation to HRS554B-471(General Management Duties of Custodian Trustee) ; in violation to Uniform Securities Act HRS 485-25 , Corporate Take-Over HRS417E-4 ;Uniform Fraudulent Transfer Act HRS651C-4 (See App.E3(a)-(c);74a-78a) (*Bf-30-32;Wr-7*)

All sale documents was concealed from her, to prelude her interference of the sale, in disguised as merger, for the unjust enrichment of both Richard & CWI.Knowing Dorothy would not have agreed to the sale, if she would have knew.

(g)CWI ,Richard Colluded in Fraudulent Conveyance of Stocks Transferred in Ineffective Title of Securities Issue

*(Bf-7)*Assignment : ["Richard Moody...(ii) hereby requests

that the Company CANCEL Share Certificate #3 issued to [1] Richard A.Moody for 700,000 shares of the company (iii)..issue new share Certificate to Richard A Moody for...70,000 shares.....to Cable& Wireless Inc for ..630,000 Shares.."].There are material issue of fraudulent conversion by Richard Trustee of all shares as his sole personal property from trust property, by Certificate No.3 which was never issued. Stock Certificate #4 & #5 was fraudulently conveyed without Dorothy (Corporate Secretary) written authorization as required by ACS By Law instead was signed by a new part time employee ,Maruja Medall. In violation to HRS415-23 (Shares Represented by Certificates); *(Bf-9)*CWI and Richard has full knowledge to the material fact of said transfer constitute ineffective title of securities, in shares transferred , which are void under ACS Subscription Agreement and under the Security Act of 1933, Sec 14 (as stated in the Subscription Agreement) & under Securities Exchange Act of 1934 Sec29

(h)Dorothy Was Inflicted In A Venerable State

By a Las Vegas Incident 10/21/95: Dorothy discover her husband and employee in Mirage Hotel room 2109, registered as Mr & Mrs Moody. In a personal tort action, [civil case #95-4309 (11/21/95)] Dorothy sue Lynne Ross , maliciously alienated the affections of Richard ,to secure a personal economic and financial gain in ACS. Wherein ACS & CWI paid for all her legal fee. Support Lynne to sue Dorothy for interference of Lynne's contractual relationship with ACS, to intimidate Dorothy's claim as ACS owner. The case was appealed(S.C.21487)on ground of bad faith& fraud by Lynne in settlement stipulation .ICA 12/99 ruled against Dorothy.

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1 .("The contention of ultra vira does no lie in the mouth of corporate officer claiming profits of transaction for himself') ; ("When opportunity to make profit arises from position occupied by fiduciary the **profit realized belongs to principal**, at least when fiduciary has excluded principal from any chance to enjoy opportunity coming to fiduciary in this manner") ; ("**A tenancy by entirety cannot be served by assignment executed by only one of the spouse**") In the matter of the TRUST created by Declaration of Trust William McBurney Dean, 47 Haw. 629, 394 P.2d 432

(i) 11/8/95 Richard's duress, Pressed For Divorce, Absent Full Disclosure of Assets and Sale documents :

(V2-P28)[I'm not going to give you a single dime until the day you sign the divorce decree.I want a divorce.I do not want to sneak anymore .I want you to have a lawyer draw up these terms as soon as possible signed and filed it within a week before I go to Mainland"Affidavit 6/3/96.] Uncontested divorce stipulation induced by fraud & duress signed in12 days. Consented by Family Court in 1 month (12/11/95)

(j)Family Court consented Divorce Stipulation 12/11/95 (AppD7 56a): All marital assets controlled in Richard name ($2.9Million cash; IRA$480,000;Res $650,000;Apt$360,000 10%ACS stock)(see AppD8 68a ;Assets Statement)

Dorothy was given (i)physical custody to 2 minor children (ii)cash $1Million, (App.D7;62a) (iii)Apt $360,000 (App.D7; 61a) (iv)IRA $200,000 retained (App.D7; 62a) (v)5%ACS stock retained (App D7;64a) (vi)$550,000 cash retained , a bad faith empty promised for tax filing in Dorothy's individual 1995 tax return for ½ tax of ACS sale.(not for Richard 's individual return) (App D7;.65a) *(Bf 11-12 ; Wr-2)*

Richard did not disclosed: (i) concealed all 90% sale documents (ii)conceal $1Million guarantee prospective value in Employment benefit(iii)concealed buy out terms of the 10%ASC stock and its minium $1 Million value (iv)conceal $424,762 marital tax assets credit already paid on1995 estimated tax(V7 P205-213). *(Bf-14 ; Wr 2-3)*

Dorothy walk out of the marriage with $1.3 Million ($1M cash + Apt), no IRA, no alimony, no employment income benefit , no dividend, no stock , an unsecured empty promise in Security Interest Assignment Agreement for the 5%ACS stock ,child support $1,500/mon.

Richard walk out of the marriage, with $3 Million ($1.9M cash + Res + all IRA) disclosed; 10% ACS stock all in his name ($1Million minium value or more at a set formula , undisclosed), $1 million guarantee value of employment benfit, all to him (undisclosed) ; $424,762 tax assets/credit all to him (undisclosed), and possibly other asset undiscovered.

(k)2/6/96 CWI Prelude Dorothy's Business Equitable Interest, Denied her 5% stock Ownership (*Bf-12;Wr-3*) :

Prior to Divorce, Dorothy personally visited CWI headquarter, by letter11/24/96 asserting her right to the transfer as owner to the 5% ACS stock . CWI intentionally made no objection. 3 months later, after divorce, CWI Counsel by letter 2/6/96 disclaimed Dorothy as owner to 5% ACS stock

(l) Family Court Post Divorce Proceedings*(Bf10-14)*: (See App F4 96a) (i)1/10/96 Richard petition custody change to him, in bad faith.(ii)5/31/96 Richard petition Family Court, further demand $54,800 tax payment from Dorothy for his tax , after denying Dorothy sale documents , to administered her tax estate on ½ share of the beneficiary estate in the 90% ACS sale, in her own 95 tax return. (iii)Dorothy was forced on 6/7/96 to petition a 60(b) Motion to set aside decree or in alternative to enforce decree and Motion for Consolidation with Richard's 2 Petitions (tax payment & custody change) for continuance in evidentiary trial with expert testimony together with the custody trial calendar already set for 8/25/96 (V2 P214-298).Dorothy's 60(b) Motion essentially on merits of invalidity of Divorce stipulated settlement as unconscionable, induced by fraud, duress, nondisclosure, resulted in tax dispute and ACS stock transfer dispute and;unequal asset division (Corp. Securities fraud claims was unknown,not yet mature)

(m)Family Court Deprived And Violated Dorothy Constitutional Rights For Due Process&Equal Protection Family Court Denied Dorothy Right For Discovery ; Denied Adjudicative Forum, For A Full Fair Evidentiary Trial With Tax Expert Testimony; Denied To Adjudicate Merits of Invalidity Of The Divorce Settlement Induced By Fraud & Duress; Security Fraud Claim Not Mature

(i) 7/5/96 Order- Denied Motion For Consolidation by evidentiary trial ; Denied Dorothy 60(b) Moton based on inefficent evidence ;Assess Dorothy fees& $54,800 to pay for Richard's tax.(ii) 8/12/96 Order denied reconsideration. (iii)10/1/96 Order reverse custody, award Richard sole legal, sole physical custody, to both minor children; enriched him

$1,130/mon child support by Dorothy(iv) ICA 1/30/98 Order, (v)Supreme Ct 3/12/98 Order affirmed *(See App.D1 to D6)*

(n)Civil Ct.Deprived & Violated DorothyConstitutional Rights, For Due Process &Equal Protection, Right For Redress, Right For Evidentiary Jury Trial To Adjudicate The Merits of Invalidity of 90% ACS Stock Sale & Fraud In This Corporate Civil Action (*AppF 3;92a-94a* hearing)

[1] On12/13/96 (1 yr after divorce) Dorothy's attorney Ronald G.S.Au filed this Complaint in civil court, seeking for equitable relief , remedy in damage. A tort action on, breach of constructive trust, fraud,.misrepresentation, breach of fiduciary duty. Substantial evidence of fraudulently conveyance and collusion with CWI was then discovered.

Based on ICA 1/30/98 rulings affirm Family Court rulings denying set aside or enforce Divorce Decree .Richard & CWI moved for Summary Judgment which was granted(*AppC7,8*) Based on Res Judicata /estoppel, alleging stipulated Divorce Decree and Family Court Post Divorce proceeding and 7/5/96 Order had resolved the issue of breach of constructive trust. Richard & CWI also awarded fees /costs (*App C3,5,6*)

Dorothy Counsel withdraw on 9/5/98. Dorothy Pro Se moved to disqualify Judge Chang on ground of personal biases on 11/24/98 pursuant to HRS601-7(b)&Canon 3 .Was denied 2/22/99.*(App.C4)* Dorothy also petition 3/8/9, 60(b) Motion for Equitable Relief From Mistake of Judgments , Requesting Re-Set For Jury Trial Consistent With Due Process.Was denied 4/26/99 *(AppC2)*Final Judgment 4/29/99 *(App.C1)* Dorothy Appeal. ICA Memorandum Opinion filed 12/29/99 (*App B3*)affirm civil court rulings. Hawaii Supreme Ct. 2/8/2000 Order denied Application of Certiorari(*AppA3)* 2/22/2000 Order denied Stay of Judgment (*App.A1*)

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1. While Family Court appeal pending , CWI & Richard on 11/11/96 secretly commenced the 10% buy without Dorothy 's authorization .(SeeApp E3-h)Pursuant to HRS 572-28 Dorothy is entitled to sue as sole individual for tort claim during marriage,against Trustee per HRS572-26, to enforce partnership shareholder agreement per HRS 572-22, for her purport shares of investment in ACS, per Uniform Partnership Act HRS425-503(Sharing Profits),HRS425D-504(Sharing Distribution)(See App E3-f)

While the claims still pending,Unknown to Dorothy "Aloha Conferencing purchased by French firm" for **$15 Millions**, published in Honolulu Star Bulletin 4/7/99 (RA V8 P180)(*Bf-4*)

VI. REASONS FOR GRANTING PETITION

1.Evidence Show Consistent , Invidious Discrimination, Against Dorothy, On Basis of Gender,Ethnic Race, Social Economic,Political, Governmental Status; Continued Bad Faith of State Court Tribunals, Continued Deprivation of Rights, in Family Ct, Civil Ct,Intermediate Ct & Hawaii Supreme Ct in All Rulings , Both By Counsel & As Pro Se; Judicial Misconduct Violated State Constitution;And Dorothy's Federal Rights Is A Just Ground For Review

(A) Evidence of Courtroom Biases, Judicial Invidious Discrimination by Family Court and Civil Court.(App. F)

a .Family Ct.6/24/96 Hearing before Judge Choy [her] 60(b) Motion To Set Aside Divorce Decree Or To Enforce Divorce Decree; And Motion To Consolidate For Hearing With [his] 5/31/96 Post-Decree Motion, And [his]] 1/11/96 Post-Decree Motion And [her] Post-Decree (**App F4-i 96a)**

b.Family Ct. 8/8/96 Hearing before Judge Choy, on Motion of Reconsideration of 6/24/96 Decision **(App F4-ii 101a)**

c. Excerpt of [Dorothy]8/8/96 Supplemental Memorandum in Support of Motion For Reconsideration**(AppF4-iii 103a)**

d. Civil Ct.5/6/98 Hearing before Judge Chang on [Richard] Motion For Summary Judgment **(AppF 3-i 92a)**

e Civil Ct.7/9/98 Hearing Before Judge Chang on [CWI] Motion of Summary Judgment **(App. F3-ii 94a)**

f.Civil Ct 9/18/98 Hearing before Judge Chang, [Richard] Motion For Fees/Costs, And Allow Recoupment Against Payment From Proceeds of Sale of Stock **(App F1 84a)**

g.Excerpt of[Dorothy] Memorandum in Support of Motion Requesting Rescual of Judge Chang 11/28/98 **(App F2 90a)**

This Court State: " The due process and equal protection provision of the 14th Amendment are universal...to all ..within jurisdiction , **without regard to any differences of race, of color, or of nationality** " Plyler V Doe, 457 US 202, 102 S Ct 2383, 72 L Ed 2d 786. This Court prohibits judical biases .

(B)Hawaii Supreme Court &ICA Manifest Biases Partiality In Memorandum Opinion filed 12/29/99

Filing On Appeal:(i)Dorothy Pro Se, filed 35 pages open brief with factual legal arguments supported by Hawaii statutues,State & Federal constitutional provision,103 case law .

(ii) Richard's counsel withdraw, Richard as Pro Se, file a 6 pages answering brief, with irrelevant statements on other Family Court proceedings, had render no factual proof, no legal arguments,no legal authority at all.Yet he still prevailed

(iii) CWI Counsel filed a 25 pages answering brief, in reliance on Richard's defense for resurrection as privy under res judicata principal, of which he made no legal arguments.

Therefore CWI and Richard's defense should necessary fail, if it were not for ICA acting and speaking in favor on behalf of him, in co-operative term to Richard and CWI 's fraud, made arguments, fabricate unjustifiable ground, with inapplicable doctrine of Res judicata, for Richard and CWI.

ICA Memorandum Opinion essientially concluded :

(i)Dorothy's oral marital partnership shareholder agreement with Richard was not a valid contract.(*App B;19a*) Allegingly, accused **Dorothy's fault** [not Richard] , alleging Dorothy "intentionally knowingly, or negligently fails to disclose "

(ii) (*App.B; 20a-21a*) "Applying HRS Sec 580-47(a) and -56(d) and res judicata principles".... "Dorothy is barred from pursuing this claims alleged in Dec 13, 1996"... . "We further conclude that Hawaii Family Court Rule(b0) does not permit Dorothy to pursue her claim against third parties CWI and ACS because (a) HFCR Rule 60(b) does not provide relief from the consequences of an intentional, knowing, or negligent failure to disclose , or(b) Dorothy cannot pursue her claim against Richard and the claim against CWI and ACS is based on their alleged collusion with Richard.".

(iii) (*App.B 22a*) That "Dorothy Complaint alleged a cause of action in ... assumpsit, HRS607-14 authorized .. fees& costs"

In another word , ICA allegingly inferred Dorothy had waivered her right and claims in the stipulated divorce settlement,by alleging her intentionally , or negligently not

disclosing this civil claim, at time of divorce, which ICA know,from record, security fraud claim was not mature then.

(i) **Could Dorothy have " knowingly, intentionally neligently fail to disclose"said business tort and contract claims,against Richard and CWI ,at time of her divorce**. ICA cannot concluded based on a factual assumption, alleged of her fault without a showing of a clear convincing evidence in benefit she enriched and reasonable motivation for her not disclose the grievance of her civil claim.Knowing full well it was Richard (not Dorothy) who hold all marital assets to his name and hold all sale documents in his hand concealed from Dorothy, at time of divorce. Whereas Richard's fraud, intentional non-disclosure did had benefit him and CWI by over Millions , indicated in record. ***(Wr 4)***

ICA Drawing adverse conclusion by factual inference is unjust, and inconsistent to due process& law . The question whether she knowingly not disclosing, is a question of fact , to be find out by jury, not a question of law, to be concluded by ICA. Dorothy is absolutely entitled to a jury trial ,in a proper forum in civil court, as warranted under Fed. Const. Amend.VII. Knowing Family Ct is not the forum for civil jury trial.This ruling in itself, is a clear convincing evidence [1] of partiality, amount to biase to Dorothy. ***(Wr 9)***

(ii) If it were not a manifest biases and bad faith,how can ICA twisted the truth fraudulently claim for Richard [(ICA Memo App.B. P 7a) "All 700,000 shares were in Richard's name.**He paid for them with an investment of $35,000 capital"**] While ICA , knowing full well, and to total ignore the truth that Dorothy (not Richard) had paid $35,000 capital cash for the 700,000 shares , having presented evidence in record. [Open Brief P6 L7-8 :"Plaintiff paid in $35,000 cash for the capital value (bar value $0.05 per share) of the 700,000 share

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1. ["A court must assess the potenial impact of official action in determining whether the state has significantly involved itself with invidious discriminations" Reitman v Mulkey,387 US 369,87 S Ct 1627] ["Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the equal protection clause" Morey v Doud,354 US 457, 77 S Ct 1344]

of ACS common stock on2/22/89 (V7 P84-5:Bank Ledger)] and her 75% substantial legal consideration Dorothy vested in ACS,by cash & raised fund by loan *(Wr 7)*.

(iii) ICA ignore,the numerous evidence of Richard's fraud Which was unknown then in Family Court proceedings,has now been discovered with evidence in record, not available then.[ICA Memo (AppB 7a)(quoted from Richard's Family Ct. testimony) " sale price.. 630,000 share.. $4.016,120..The **income tax payable by Richard was $1,209,601"**].

The truth evidence in record in this case show, Richard 1995 tax return (V7 P206-1213),proved (include his 1995 $466,395 personal income)**he actually only paid $818,426** (Fed.& State tax).She would only need to pay $409,213.Not the $604,800 ,she was order by Family Court (fraudulently represented by his CPA letter on his behalf) The reason was he did not disclose $424,762 in 1995 estimated tax already been paid by both,before divorce. The enrichment of over $200,000 tax fraud against Dorothy.His nondisclosure to sale records for tax, serve,Corporate fraud.& marital fraud. *(Wr 5)*

(iv) ICA also ignore, there is a change of fact to the value of the 5%, he had listed.[ICA Memo.AppB 8a,(quoted from Richard 's Family Ct record): "Dorothy awarded $1,000,000 net cash .....$1,000,000 in assets including the **$222,222 estimated value** of her ½ of the 10% of the ACS stock.]

Now that ICA is know full well,from the Shareholder Agreement P11 (V7 P201) , which was intentionally concealed from Dorothy and Family Court, it show **$500,000 minium** value or more in a set formula for 5% known to him,(not $222,222).([Shareholder Agreement P.11 Sec 14.3 d "total cash consideration payable by CWI to RM shall not be less than **one Million Dollars** [for 10%] ") *(Bf-8,14;Wr 6)*

ICA know full well, based on Family Court record, Dorothy did not received $1Million assets(only $360,000 Apt) She did not received her $200,000 IRA fund, which should be enforced. She had never received the $550,000 retained by Richard for her tax estate in her 1995 individual tax return, which she was entitled to be enforced per Decree.

[ICA Memo AppB2; 8a :2/6/96 : ".CWI wrote letter to Dorothy..advising..the assignment and or transfer is null and void of no effect"] She had never received her 5% stock which she is entitled to& should have been enforced .Or be provided remedy by Family Court to secure against fraud by placing ,10% ACS stock certificate in escrow/trust account, requiring disclosure and both, aurthorization upon sale *(Wr5)*

ICA also know full well, Dorothy had never received any disclosure of true value,nor proceed, given the intended 10% buy out in 11/11/96.[ICA Memo AppB 11a " There is **not evidence in record** that the conveyance and payment actually occurred"]. Knowing in record **ACS purchased by Genesys USA for $15 Million** published on 4/7/1999 *(V8P1890) (Bf-4)*

(v) Yes, ICA know full well ,from numerous evidence in record,that (not Dorothy) Richard, is the spouse at "fault". ICA know, the intentional nondisclosure initiated by Richard in business fraud perpetuated into marital fraud,at time of divorce; that Family Court rulings was obtained by his fraud was not final; that it cannot be the basis of judgment to this Corporate civil claims; that Family Ct do not have juridiction(Civil Ct do has jurisdiction) to finally adjudicate ASC Corporate property, [1] in this Civil Corp .security fraud claim. *(Bf 14-16 ; Wr 10)*

Applying the principles ICA concluded :(App B2;20a) "Absent this disclosure, the family Court cannot comply with its duty under HRS sec 580-47(a)".....Does the nondisclosing spouse[Richard] benefit from nondisclosure....We conclude that(1)HRS 580-47(a)and -56(d) and res judicata principles

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1. ["Divorce cases involve a maxium of four discret parts : (1) dissolution of marriage (2) child custody, visitation, and support ;(3) spousal support ; (4) division and disrtribution of property and debts; this section does not apply where the **family court did not have jurisdiction to finally adjudicate part(4)"**Paul,9Haw.App176,830 P 2d 1158(1992)]

[(" As courts have inherent power in situations where a judgment was obtained by fraud") ; ("Since subsection (d) of **HRS 580-56 opts against finality when fraud, misconduct is involved"**) Kano v Kano,8 Haw.App172, 799 P.2d 55 Cert.Denied,71Haw.668,833P2de 900(1990)]

Family Court did not have jurisdiction to finally adjudicate business property on ACS stock sale, for Dorothy and Richard

dictate that the claim [Res judicata] by nondisclosing spouse[Richard] against the other spouse [Dorothy] becomes **unenforceable when the family court loses jurisdiction** to award it; and HRCR rule 60(b) [does] authorize relief [to Dorothy] in this situation ,[because of Richard's intentional concealment and fraud],newly discovered evidence [in this civil action]which by due diligence could not have been discovered [in prior divorce action] " .*(Wr 11)*

Accordingly, based on ICA 12/29/99 decision, Supreme Ct & ICA know Richard & CWI Summary Judgment, should be denied.Res judicata is unenforceable. Supreme Ct. & ICA know family court loses jurisdiction over the issue. Supreme Ct & ICA know, Dorothy was entitled to relief from fraud,in Civil Ct,in this Corp.claim.State Ct. were in bad faith,know they had willfully violated their own ruling

. **(vi)** [ICA Memo , App. B 13a : " Citing HRCP 60(b), Dorothy alleged... Judge Kevin Chang was **personally biase and prejudice against her** ... sale of ACSI shares that she alleges were **worth no less than $10,000,000** She alleges that Richard intentionally and unjustly enriched himself by the sale & that she was the victim of misrepresentation concealment, and fraud by Richard, ACS and CWI."]. Supreme Ct.&ICA know,had acknowledge the material issue of fraudulent conveyance, inadequate price , had been raised by Dorothy.

Evidence in record, indicated business appraiser Mr. John Candon 's opinion.["ALC Communications was sold for approx 2 Billion in 1994 at 2 times its revenue, Confetech sold for 52 Millions in 1994 at 1.5 times its gross revenue. Darome Conferencing sold for 32 Millions in1995 at3 times its revenue.ACT Teleconferencing sold for $40.2 Million in 1997, at 4 times its revenue."..... "The.. investment value of ACS to CWI on 7/1/95 ...,would be **$13 Millions"**]. *(Bf-8)*

Determination of the true value of ACS stock would need expert testimony, to be determined by jury trial. *(Wr 11)*

[" **Controverted allegations of fraud** , cannot be resolved upon motion for summary judgment, but only by **a trial on the merits"**]Fre v Bland,369US663,82 S Ct1089 *(Bf25 ; W11)*

ICA know full well,there are valid ground of Corporate liability .Corp. Defendants should not have been dismissed by Summary Judgement,in accordance to,**(not family law)** Coporate law and Staute under HRS 417E Corporate Take-Over, HRS 651C Uniform Fraudulent Transfer Act; HRS 485 Uniform Securities Securities Act (App.E3 74a)***(Bf9-10;Wr7)***

(vii)Richard's business fraud and marital fraud , could not have prevailed, if it weren't for the Federal violation, biases and bad faith, continuing deprivation of fundamental right against Dorothy by Family Ct,Civil Ct, ICA& Supreme .Ct. prejudicial adverse partial rulings, denying Dorothy forum &due process right for adjudication of merits, in both actions.

2.Fundamental Miscarriage of Justice, Ireraparable Injury,Intentional . Federal Violation To State Constitution ArticleISec2.3.4.5And U.S.Constitution Amend.I,V,VII ,XIV ; A Result of Civil Court, Intermediate Court of Appeal, Hawaii Supreme Court,Not Enforce Due Process Right Not Enforce Equal Right For Protection,Not Enforce Right To Petition ,Not Enforce Right For Jurial Trial

1 (i) Per authority in Epp v Epp was cited by ICA themself. ICA know full well ,(contrary to their ruling) Dorothy' s oral

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1 [("Partnership model is appropriate law for family court".. . "Act 194 amended HRS 572-22 as follows : Contracts. A married personal may make **contract** oral and written seal and unsealed , with his spouse...as if she was sole....(4) By partnership agreement for **business purposes**... all contracts made between spouses, whenever made...shall be **valid**".....

"HRS 572-28 states that a married person may sue and be sued in the same manner as if the person were **sole**") ; ("**Sufficient and legal consideration** is an essential element of a valid contract.17A Am Jur.2d Contract Sec 16(1991)"); ("All valid and enforceable... marital agreement.. pertaining to a property division issue... **must be efforced.** HRS572-22, 580-47")]Epp v Epp. 80 Haw 79 ,905 P 2d 54 (1995) (*App. E3-h; 82a)*

[" Count in dissolution action alleging a **fraudulent conveyance** of property by husband **should not have been dismissed** on basis of prior pending action,... and both actions sought adjudication of same underlying **issue concerning transferee's ownership of corporate stock**.... interest did not extend to the dissolution of the marriage or to the related financial orders, and the **court's ruling on fraudulent conveyance was entirely independant of ruling on dissolution**"]Gaudio v. Gaudio ,23 Conn App287,580A 2d 1212 (1990) ***(Bf-20 ; Wr-6)***

marital agreement is valid, pertaining to ACS partnership shareholder agreement for her purport shares, is evidence and supported by her 75% substantive legal consideration vested in ACS. It must be enforced. Dorothy has standing to sue as"sole" to true value of stocks per HRS572-22;572-26;572-28

(ii)Per Gaudio case law, ICA know , Dorothy is entitled to pursue a separate equity suit, in this civil claim on Corporate ground as a business partner, holder of stock (not as a wife) to recover damage and equitable relief under the principal of court of equity, Statute and Corporate law(not family law) Independant from divorce action.,as sole individual per HRS 572-28, Independant from Family Court decision(***Bf19 Wr6)***

Dorothy cannot be barred.. Judgement in divorce, is not essential to judgement in Corp fraud claim. ***(Wr 7)***

(iii)Sup.Ct& ICA know full well, from evidence in record, it is clear that the 4 prongs pre-requisite are not met as cited in Dorrance v Lee case & Hall v State case, quoted by ICA Subject matter and parties,not identical ,no judgment on merits, in both action, rulings on divorce not essiential to the final judgment in Corporate civil claim. Res judicata claim should be denied, inapplicable in this case ***(Bf28-29 Wr8-10)***

(iv)Sup. Ct&, ICA know full well, in this case the interest of providing full fair opportunity for adjudication to the merits of fraudulent conveyance ,outweights the interest in avoiding [1] the burden of relitigation, consistent with the measure of fairness rule& consistent with decision in Dorrance case

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2. ***(Wr 9-10)*** The Supreme Court of Hawaii state :["we agree that the interest in providing an opportunity for a considered determination...**outweights** the interest in avoiding the burden of relitigation .Restatement (Sec.) Of Judgments Sec 27 cmt h (1980) ;see also United States v Weems ,49 F 3d 528,534 (9th Cir.1995)..("The Two rationales supporting the necessary to the judgment's rule are: (1) **to ensure that the finder of fact in the first case took sufficient care in determining the issue** (2) to protect against the fact that appellate review where the issue is **not necessary** to the determination of final judgment."] Dorrance v Lee 90 Haw.149 ["The achievement of substantial justice rather than symmetry involved in the doctrine of mutuality of estoppel,is the measure of the fairness of the rules of res judicata." Bonder Tongue Lab. V University of Illinois Foundation ,402 US 313,91 S Ct 1434]

authority cited by ICA. Res Judicata claim by summary judgment should be denied if it weren't for ICA intentional prelusion, willful, bar with inapplicable doctrine, deprived Dorothy an adjudicative forum by jury trial,under Amend.VII violated the Equal protection clause & Due Process clause under Amendment V and XIV. *(Wr 12)*

[2] ICA know full well, this tort claim, actual procuring cause ,in fraud not the promise itself. Knowing full well fee/cost should be denied. Maliciously asserted continuous injury, duress, financial stress on Dorothy for Respondents penalized her $72,798 , fund she can't afford to pay.*(Bf 33 Wr 12)*

Hawaii Ct. decision itself, is a suppressive retaliatory discrimination. To punish (Dorothy) a civil litigant,deprived her fundamental due process and equal protection civil right to petition for security fraud , in a civil case ,deprived her a civil jury trial. It is a intentional violation to Federal rights, under Amend.I,V,VII, XIVand Civil Right Act , 42 USC 1983; 42 USC 1986 and 15 USC78cc;15USC77n (App.E1).Violated State Constitution Article. I 2, 3, 4, 5 (App E2) *(Bf35 Wr12)*

Fundamental Miscarriage of justice and ireparable injury,a dirtect result of Hawaiii State Court's Fed. Violation

3. Decision of U.S. Supreme Court Prohibit State Judicial Authorities In Violation To Federal Constitutional Rights And Civil RightThis Court And Congress Overriding Policy Is To Seek Out State-Sanctioned Discrinimation By State Actor And Eradicate It Whenever It Is Found.

Hawaii Courts, and state judges, who sworn to by the Judicial Professional Code of Conduct (Canon3; AppE3-d) who sworn by Article VI [2] ,[3] to uphold the constitution, to serve justice for all, cannot issue a decision which bows to the existence of racism and gender socio-economic status classification, as a fact of American life. In doing so, a court judically institutionalizes and sanctions the blight the Amend V and XIV was designed to eradicate. This Court has subject

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3.. "There can be no recovery for a breach of contract where the complaint shows a cause of action in tort" Holtz v Board of Comrs.(Ind) 560 NE2d 645 117 CCH LG 56464 .

state sanctioned discrimination,on basis of race, gender classification, to strict constitutional scrutiny. See J.E.B. v Alabama Ex Rel 128 L Ed 2d 89(1994)

[1] Hawaii Supreme Ct. decision , in this case , is clearly made on the dicriminatory basis of gender, race ,socio-economic, class distinction; must necessarily fail. If this Court allow it to stand, given the known facts of gross violation, it serve to reinforce and perpetuate the historical pattern of discrimination and serve to foster said violative misconduct in Hawaii State Court., Hence would subject more Hawaii resident as victims like Petitioner, to abusive discriminative state actors , in times to come.

4. Petitioner Entitled For Review To Hawaii Supreme Court Final Judgment By This CourtUnder 28USC1257a While This Case Involve Important Public Civil Right Issue Under 42 USC1983,Fundamental Miscarriage of Justice ,Irreparable Injury,Extraordinary Circumstances

[2] This Supreme Court has the sole authority to hear and reverse, Hawaii Supreme Court adverse prejudicial rulings, .

Hawaii Supreme Court decision itself, is violative to the Constitution under Amend. I , V, IIV, XIV and the Federal Civil Rights Act under 42 USC 1983; 42 USC 1986.*(Ap.E1)*

In particularly, in this case, Hawaii Ct.'s decision, necessary imposed a judicial wavier upon Petitioner to the existing on-going material issue of multi-millions business

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1. ["The Constitutional requirement of due process in safeguarding the liberty of the citizen against deprivation through the action of state embodies the fundamental conceptions of justice which lie at the base of the civil and political institutions of the United States" Mooney v Holohan 294 US 103 55 S Ct 340 98 ALR 406 ; 79 L Ed 791]

["A state may not, under the equal protection clause of the 14th Amendment, draw a line which constutites an invidious discrimination against a particular class" Ley v Louisiana through Charity Hospital 391 US 68,88 S Ct1509]

2 28 U.S.C.A 1257 see Note 4: Supreme Court of United States is only federal court authorized to hear appeals from state courts. Elks Nat. Foundation v Weber,C.A.9(Mont.) 1991,942 F.2d 1480, certiorari denied 112 S.Ct 2995,120 L Ed 2d 872.

assets in security fraud transaction since 6/30/95. Hawaii Ct. decision in itself, is also violative to the anti-waiver federal statutes. [Securities Act of 1933 Sec 14 (15 USC 77n) and Securities Exchange Act of 1934, Sec 29 (15 USC 78cc), (*See App.E1 72a*)] Something , the federal government seek actively, to eradicate securities fraud, effecting interstate commerce, where state government cannot command.

Said ruling , if allow to stand , would incurred further injury, detrimental prejudicial to Petitioner in any remedial proceedings,would prelude her in any State & Federal forum.

Hawaii Supreme Court decision,`must necessary fail, in light of the protection in Supreme Law of the Land (Article VI[2]), by the Supreme grace of this Court.

5. Evidence of Futility And Exhaustion of State Remedies Continuing Intentional Bad Faith,Bias Of Tribunals, Stymied By State Proceeding/Rulings,Justify Immediate Federal Relief Remedy Pursuant to 42 USC1983, 1986

[3] (See App.A1 to D7) Dorothy has exhausted in futility all available state remedies, where Hawaii Supreme Court denied Writ of Certiorari 2/8/2000 was final. **Dorothy had presented Civil Court, Intermediate Court of Appeal & Hawaii Supreme Court both factual and legal premises of the federal claim she asserted in this U.S. Supreme Court** Application for review to Supreme Court of United States is the only avenue available to petitioner for just immediate Federal judical relief & remedies,to violation by state actors

[1] Under to 42 USC 1983 & Sec 1986.

3.. ["Federal petitioner satisfied exhaustion of state remedies requirement, where state supreme court had been presented with claim on petition for direct appeal." Moore v Kirby,S.D.W.Va 1995, 879 F.Supp.592 ; Johnson v Zenon,C.A.9 (Or.)1996,88 F3d 828 ; Puchner v Kruzicki,E.D. Wis.1996, 918 F.Supp1271]

1. 42 USC 1983 was designed to provide means of redress for past violations of civil rights Tyler v Lark 472 F2d 1077, cert.den.(1973) 414 US 864, 38 L Ed 2d 84, 94 S Ct 114

42 USC 1983 basically seeks to (1) deter state actors from using badge of their autgority to deprive individuals of their federally guaranteed rights, and (2) provide related relief. Richardson v McKnight (1997) US , US 138 L Ed 2d 540

6. Danger Of Ireparable Loss Is , Great &Immediate Justify Review For Immediate Relief And Remedies

[1] (i)Dorothy was damage by suppressive retaliatory unjust penalty$72,798.72 for the exercise of her fundamental right against fraud (ii) Petitioner has sustanted great loss , in inadequate price of 90% ACS stock sale had lost possession to her ACS stock(50% or more), had loss its Corp profit distribution since 6/95 and preluded from recovery (iii) The danger of irreparable injury in solvency of ACS in the hand of CWI the wrongdoer are great and probable. (iv)Risk of loss of employment to the 100's ACS employee in Hawaii inevitable , when ACS operation in Hawaii be relocated to Mainland, are likely,when existing office lease expiring soon

(v) If Hawaii Court decision allow to stand , wealthy foreign Corporation like CWI, who had already prevailed with unclean hand ,if further allow to be free with unclean hand,by this Court, it would serve to deprived the just wealth of America and its citizen, and potentially loss in govt. tax income from fraud of unsold price by millions.It would also serve to encourage said deceptive trade misconduct ,in continuing violating U.S. Commercial Code,in other business transaction, Citizens and business owner, in America can ever more be at risk, to injury, in exposure to said pattern of fraudulent trade practise by the unjust enrichment to wealth foreign Corporate giant,like CWI.

7. Fundamental Miscarriage of Justice, Extraordinary Circumstance Existed Meet Requisite For Federal Relief.

[2] Pro Se Petitioner has show justifiable factual and legal federal claim, a result of constitutional violation by state act.(Paragraph1, 2 above). Has demonstrated extraordinary circumstances, important public civil right issue (below in

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1. ["Law enforcement process... be issued only under extraordinary circumstances where the **danger of irreparable loss is both great and immediate**"Young v Harris 401US37,91SCt746, 27L Ed 2d 669 (1971)]

2. [" Principles of United States Supreme Court decision that **extraordinary circumstances** must be present to justify federal injunctive relief against state.....were applicable in ...42 U.S.C 1983 ; U.S.C.A. Const. Amend.1"]

Parag.8) and danger of irreparable loss.(Parag. 6). Evidence to continuing deprivation of constitutional rights, continuing biases by state tribunals,evidence of futility and exhaustion of state remedies(Parag.5)(App.A1toD7) .Resulted in fundamental miscarriage of justice. Petitioner should be entitled to due process for immediate federal relief and remedies. Failure by this U.S. Supreme Court to grant review in itself, would constitute & result in "fundamental-miscarriage of justice" .

8 .Federal Claim At Hand Is of Public Importance, Hawaii Ct.'s Historical Pattern of Bureacratic Personal Favoritism, Racial,Gender, socio-economic, class Discrimination Should be Eradicated, Hawaii Ct Should Enforce Federal Rights

National hero and spiritual leader, Martin Luther who had once called out to the American , the governmental & judicial authority, the awakening to the American dream for equality in civil rights grounded on American Constitution. A profound evolution in social,judical governmental conscious effort to eradicate inequality and racial discrimination had effected , never dream of possible at the time.

This Court and Congress had change the course of recent American History, elevated the quality of inter-relationship , attributed to the vital growth and strength of Democracy, in the enactment & enforcement of the Civil Right Act [1]

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1. This court acknowledge the reality of prejudice towards to woman,said : ["While the prejudicial attitudes toward women in this country have not been identical to those held toward racial minority similarities between the experiences of racial minorities& women , in some contexts overpower those differences.....We need not determine ,however women or racial minorities have suffered more at the hands of discriminatory state actors ,during the decades of our Nation' s history. It is necessary only to acknowledge that our Nation has had a long and unfortunate history of sex discrimination" id.,at 684, Frontiero v Richardson36 L Ed 2d 583,93 S Ct 1764 (1973)] id at 101 (quoted) J.E.B v Alabama ex rel T.B.511US,128LEd2d 89,114 S Ct 1419 (1994)

The effect of discrimination is : ["discrimination in the courtroom raises serious questions as to the fairness of the proceedings conducted there, and racial bias mars the integrity of the judicial process and prevents the idea of democratic government from becoming a reality."] Edmonson V Leesville Concrete 500US,114 L Ed 2d 660,111 S Ct 2077)

1 This Court state with firm conviction to eradicate private biases : ["Private biases may be outside the reach of the law ,but the law cannot directly or indirectly give them effect. Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held."] Paimore V. Sidoti, 446 US 429, 104 S.Ct 1879, 80 L Ed 2d 421 (1984)

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1 Petitioner,a naturalized citizen (since 1990),a minority Chinese woman, divorced (since 12/95), a Pro Se civil litigant, in a civil case, was denied of her civil right, for lawful due process and protection, for remedy and relief, denied of her civil right for a civil jury trial. In her recent 4 years experience ,in the world of legal justice, met with enormous injustice ,in every single case, including this Corp civil action, in all State Court Proceedings. This is not an accident as I understand it now, having experience said prejudice, which this Court had referred to in above J.E.B.case . It does speak of the injustice inequality not only of my own, but also in many abused divorce woman, as well as Pro Se individual, like me.

In today's world, when the quality and standard of intimate relationship in the time past, between man and woman,can no longer satisfy the desire and drastic change of a higher standard, demanded of a spousal relationship of today's time, a equality, mutuality in respect ,true love and honesty.Short-lived marriage,divorce popping up everywhere Personal and Family intergrity seems quickly vanishing.

I believe, most divorce woman, like myself, had ended up divorce for less(not equal), to avoid costly legal fee in litigation. Or else Pro Se is an alternate choice,which should be fostered rather than giving up the legal right, In cases, like myself, when the husband hold most of the business assets, (is likely to conceal marital asset) and had enjoyed more social economic, status than a wife, who had spend more time, in the nuturing care to the family and children.

While woman being a more emotionally venerable creature than man, had traditionally being conditioned to a choice of easy way out, by simply give up her equal right to her equal share, like in my own experience in this case. Therefore

divorced woman is at a distinct disadvantage, and particularly need lawful protection for equal legal right. Whereas, the prejudice existed in this country ,as this court had referred to. Divorced man and social biases in general including judicial biases, like in this case, expect woman to walk out with less.

A divorce woman after having brused and victimized, aggressively assert her legal pursue of right to equal share like myself, inevitably being view as a villain or as a bitch., in today's time, when the controlling corrupted brutal force of the masculine ,like Richard, dominated over woman in business judicial ,governmental leadership role .

During his Civil Right Campaign,Rev Martin Luther once said: " the idea whose time had come". He also said: "In a real sense all life is inter-related. All persons are caught in an inescapable network of mutuality,tied in a single garment of destiny. Whatever affects one directly affects all indirectly.I can never be what I ought to be until you are what ought to be, and you can never be what you ought to be until I am what I ought to be. This is the inter-relatedness nature of reality"

The time would has to come via the authority of this Court & Congress, in the turn of this new Millennium into the New World, when the nuturing love force of the feminine goddess, (not being prejudiced against).Woman shall arise to acclaim herself"woman of free will"given her respective equal rights. No more shall woman be a victimized "creature of circumstances" . The strength of democracy in its people, (verse purely dependency on government) and the conscious awareness and educatedness of the public, to the exercise and respect of our fundamental constitutional and civil right shall arise, and shall ever more be intimately alive in the heart and mind in the life of the citizens of this greatest nation on earth, by the continuous effort of this Court &Congress to eradicate said prejudice as this Court had stated in Paimore case

The fulfilling nuturing love force of the feminine is the true ultimate source of happiness & balance to the masculine dominating paradigm .To make woman a inferior unequal partner to man only diminish the capacity of his own source

where happiness flows.The silent unhappy acceptance of most woman to the dominating unequal treatment by man in this Country ,is the cause of desparation and grievances for man, themselves too.The worth of womanhood and respect to her as equal with man, equality in rights between man and woman, are sure to rise ,by the supreme grace of this Court with the sword of the Supreme Law of the Constitution, upon this Land.

This is the ultimate pathway, to a long term peace and harmony in living between man and woman for highest good of humanity. Should we would desire and hold a better hope to future world for our children and grand children,in generation to come. America, is the leader & home country responsible for the rising of woman right, in the world, in recent history. I cannot expect of evolution of equality in woman right in other non-democratic country, like my mother land ,China, when the expectation to equality in woman right , is far from being real in real life,in this greatest Democratic nation on earth, founder to the birthing of Democracy to humanity and all of the world.

V. CONCLUSION

The Supreme Law of the Land (Article VI[2]), reside in its **utmost almighty majestic supreme power** in this United States of Supreme Court, to manifest its dividine grace of **equality and justice** ,up held in its greatness of highest respect on earth, boundless unto the spacious sky, reigning from purple mountain to fruited plain, commanding from sea to shining sea.The sword of this Supreme Law protect and safeguard all citizen. The light of justice, will ultimately triumph by thy supreme grace of this Court for the world of justice on earth, sure as the rising sun, the brilliant light are to shine. To thy majestic role of this Court I pray , pleading for the highest good of the grace of justice upon this Land for many discriminated aggrieve woman and Pro Se individual like me.I pray this Court would grant me the grace of thy just review.

June 26, 2000 Respectfully Submitted

587 Kealahou
Honolulu, Hawaii 96825 Dorothy Soo-Kiu Lam ,
TEL: (808) 386-9886 PETITIONER PRO SE

In the
Supreme Court of the United States
October Term 1999

DOROTHY SOO-KIU MOODY,
aka DOROTHY SOO-KIU LAM,
Petitioner,

vs.

RICHARD MOODY,Individually and as President or Former President of ALOHA CONFERENCING SERVICES INC., CABLE & WIRELESS INC

Respondent.

APPENDIX TO
On Petition For Writ of Certiorari To The Supreme Court Of The State of Hawaii

PETITION FOR WRIT OF CERTIORARI

DOROTHY SOO-KIU LAM
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APPENDIX LIST

Appendix No **Page**

IN THE SUPREME COURT OF THE STATE OF HAWAII

Appendix A-1 —Feb.22, 2000 Order Denying Stay of Judgment Pending United States Supreme Court Appeal.. .. 1a

Appendix A-2 — FEB.10, 2000 Order Denying Motion For Stay of Judgment Pending Hawaii Supreme Court Ruling on Application of Writ of Certiorari..... .. 2a

Appendix A-3 — Feb. 8, 2000 Order Denying Application of Writ of Certiorari..... 3a

Appendix D-1— March 12,1998 Order Denying Application of Writ of Certiorari on Family Court Post Divorce Proceedings S.C.No.20021, 20085, 20195.....44a

IN THE INTERMEDIATE COURT OF APPEALS THE STATE OF HAWAII

Appendix B-1— Feb.25, 2000 Notice And Judgment on Appeal From The First Circuit Court..... . 4a

Appendix B-2— Jan 25, 2000 Order Denying Motion To Expediate Appeal And Request For Stay of Judgment . 5a

Appendix B-3 — Dec.29, 2000Memorandum Opinion... 6a

Appendix D-2 — Jan.30, 1998 Summary Disposition Order Affirming All Family Court Rulings in S.C. No. 20021,20085, 20195..... 45a

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT THE STATE OF HAWAII

Appendix C-1— April 29,1999 Final Judgment..... 24a

Appendix C-2— April 26, 1999 Order Denying Plaintiff Motion For Equitable Relief From From Mistakes of Judgment Granting Corporate Defendants

Summary Judgment & Fees/Costs Award; Setting Aside Order 7/6/98,8/6/98, 11/27/98,2/22/98; Re-set This Case For Adjudication By Judy Trial To Be Consistent With Due Process And Law..... 26a

Appendix C- 3 — April 26, 1999 Order Granting In Part And Denying In Part, Plaintiff Motion Objecting To Defendants Aloha Conferencing Inc And Cable & Wireless Inc's Bill of Taxable Costs..... 28a

Appendix C-4 — April 22, 1999 Order Denying Plaintiff Motion Requesting Disqualification of Judge Chang, filed Nov. 24, 1998..... 31a

Appendix C-5 — Feb 22,1999 Order Granting Defendants Aloha Conferencing Inc And Cable & Wireless Inc 's Motion For Attorney Fees And Costs..... 32a

Appendix C-6. — Nov 27, 1998 Order Granting Richard Moody Fees And Costs..... 34a

Appendix C-7 — Aug 6, 1998 Order Granting Defendants Cable & Wireless Inc And Aloha Conferencing Services Inc Motion For Summary Judgment filed May 21, 1998..... 38a

Appendix C-8 — July 6 , 1998 Order Granting Defendants Richard Moody Summary Judgment 41a

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

Appendix D-3 — Oct. 3, 1996 Order Denying Dorothy Reconsideration of Custody Change Awarding Father Sole Legal Sole Physical Custody To Both Minor Children(S.C.No20085)..... 47a

Appendix D- 4 — Oct. 1, 1996 Order Re: Custody Award To Father,Vistation And Related Issues .. 48a

Appendix D-5 — August 12, 1996 Order Denying Dorothy Motion For Reconsideration of Decision Denying Motion To' Set aside Divorce Decree Or To Enforce Divorce Decree..... 53a

Appendix D-6 — July 5 ,1996 Denying Dorothy Motion For Consolidation Denying Motion To

Set Aside Or To Enforce Divorce Decree,Award
$54,800 Tax Payment And Attorney Fee To Richard.....54a
Appendix D-7 — Dec.11, 1995 Stipulated ,Court
Consented Divorce Decree Settlement Agreement..... .... 56a
Appendix D-8 — Nov 20, 1995 Richard Moody
Assets Statement (All Marital Assets In Richard name).... 68a

CONSTITUTIONAL AND STATUTORY PROVISIONS

Appendix E-1 — Constitution OF United States..... 70a
(a) Article VI[2]..... 70a
(b) Article VI[3].....70a
(c)Amendment I..... 71a
(d) Amendment V..... 70a
(e) Amendment VII.....71a
(f) Amendment XIV.....70a
(g)Federal Civil Right Statutes
(i) 42 U.S.C. 1983..... 71a
(ii) 42 U.S.C. 1986..... 71a
(h) 28 U.S.C. 1257(a).....71a
(i) Securities Exchange Act of 1934
Sec 29 ,15USC 78cc(Validity of Contract)..... 72a
(j) Securities Act of 1933
Sec 14 ,15 USC 77n(Contrary Stipulation Void)...72a
Appendix E-2— Constitution of State of Hawaii..... 73a

Appendix E-3– Hawaii Revised Statutes..... ..... 74a
Append.E-3(a) – HRS 417 E Corporate Take -Overs.... .. 74a
Append.E-3(b) – HRS 651C
Uniform Fraudulent Transfer Act..... ... 76a
Append E-3(c) – HRS 485 Uniform Securities Act..... .... 78a
Append.E-3(d)(i) – HRS 601-7(b)
Disqualification of Judges..... ... 79a
Append E-3 (d)(ii) – Code of Judicial Conduct Canon 3. ...79a
Append.E- 3 (e) – Hawaii Family Court Rules 60(b)..... . .. 80a
APPend E-3(f)-- HRS 425D Partnership Statutue..... ... 80a
Append E-3(g)-- HRS 554 Uniform Custodian Trust Act....81a
Append.E- 3(h)(i)–HRS 572-22(contract)..... 82a
Append.E-3(h)(ii)–HRS 572-26 (Personal Trustee)..... 83a
Append.E-3(h)(iii)–HRS 572-28(Suit by and Against)..... 83a
Append.E-3(h)(iv)–HRS 580-47(Division of Property)..... 83a
Append.E-3(h)(v) –HRS 580-56(Property Right).....83a

COURT PROCEEDINGS AND HEARINGTRANSCRIPT EVIDENCE OF COURTROOM BIASES & PREJUDICE

Appendix F-1— Sept 18, 1998 Hearing Before Judge Chang,In Civil Case Dorothy Pro Se Opposed Richard Motion ForFees/Costs..... 84a

Appendix F-2 An Excerpt of Dorothy Pro se's Memorandum Requesting Judge Chang Rescual Pursuant to HRS 601-7(b) And Canon 3 ..... 90a

Appendix F-3

Append. F-3(i) - May 6, 1998 Hearing Before Judge Chang In Civil Case, Dorothy Counsel Opposed Richard Motion For Summary Judgment..... 92a

Append. F-3(ii)–July 9, 1998 Hearing Before Judge Chang In Civil Case, Dorothy Counsel Opposed Cable & Wireless Inc Summary Judgment..... 94a

Appendix F- 4 Family Court Proceedings And Transcript

Append. F- 4 (i) – June 24, 1996 Hearing Before Judge Choy, In Post Divorce Proceeding, By Dorothy Counsel, on Request For Equitable Relief, Rule 60(b) Motion,To Set Aside Or To Enforce Stipulated Divorce Decree Settlement..... 96a

Append. F- 4 (ii) – August 8, 1996 Hearing Before Judge Choy In Post Divorce Proceeding, By Dorothy Counsel ,On Motion For Reconsideration of Order Denying Dorothy 60(b) Motion To Set Aside Or Enforce Divorce Decree Settlement..... 101a

Append. F- 4 (iii) – Excerpt of Dorothy's Family Court August 8, 1996 Memorandum In Support of Motion For Reconsideration of Order Denying 60(b) Motion 103a

APPENDIX A-1 — ORDER DENYING STAY OF JUDGMENT PENDING U.S. SUPREME COURT APPEAL
FILED FEBRUARY 22, 2000

NO. 22372
IN THE SUPREME COURT
OF THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	CIVIL . NO. 96-5126
Petitioner- Plaintiff- Appellant,	
vs.	
RICHARD ALLYN MOODY, Individually And as President or Former President of ALOHA CONFERENCING SERVICES, INC., CABLE & WIRELESS, INC.,	
Respondents – Defendants- Appellees	

ORDER

Upon consideration of Petitioner-Plaintiff-Appellant Dorothy Soo-Kiu Moody's motion for stay of judgment pending upon the decision of United States Supreme Court on the intended appeal of petition for writ of certiorari, the papers in support, and the records and files herein,

IT IS HEREBY ORDERED that the motion for stay of judgment is denied.

DATED: Honolulu, Hawai'i, February 22, 2000.

FOR THE COURT:
/s/ MARIO R. RAMIL
Associate Justice

Dorothy Soo-Kiu Lam,
petitioner-appellant , pro se on the writ

APPENDIX A-2 — ORDER FILED FEBRUARY 10, 2000 DENYING MOTION FOR STAY OF JUDGMENT PENDING HAWAII SUPREME COURT RULING
NO. 22372

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	) CIV. NO. 96-5126
Petitioner-Plaintiff-Appellant,	)
vs.	)
RICHARD ALLYN MOODY, Individually and as President or Former President of ALOHA CONFERENCING SERVICES, INC., CABLE & WIRELESS, INC.,	)
Respondents-Defendants-Appellee.	)

ORDER

Upon consideration of Petitioner-Plaintiff-Appellant Dorothy Soo-Kiu Moody's motion for stay of judgment pending the outcome of the application for writ of certiorari, the papers in support, and the records and files herein, it appears that this court issued an order of February 8, 2000 denying the application for writ of certiorari, and the instant motion for stay is moot. Therefore,

IT IS HEREBY ORDERED the motion for stay of judgment is denied as moot.

DATED: Honolulu, Hawaii, February 10, 2000.

/s/ MARIO R. RAMIL
Associate Justice

Dorothy Soo-Kiu Lam
Petitioner-Appellant Pro Se

APPENDIX A-3 — ORDER FILED FEBRUARY 8, 2000 DENYING APPLICATION FOR WRIT OF CERTIORARI

NO. 22372

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	) CIV .NO.) 96 - 5126
Petitioner-Plaintiff-Appellant,	)
vs.	)
RICHARD ALLYN MOODY, Individually and as President or Former President of ALOHA CONFERENCING SERVICES, INC., CABLE & WIRELESS, INC.,	)))
Respondents-Defendants-Appellee	)

ORDER

The Application for Writ of Certiorari filed on January 28, 2000 by Petitioner-Plaintiff-Appellant Dorothy Soo-Kiu Moody is hereby denied.

DATED: Honolulu, Hawai'i, February 8, 2000.

FOR THE COURT
/s/ RONALD T.Y. MOON
Chief Justice

Dorothy Soo-Kiu Moody,
Pro se, on the writ

APPENDIX B-1 NOTICE AND JUDGMENT ON APPEAL
FROM THE FIRST CIRCUIT COURT FILED FEB.25, 2000 IN S.C.NO. 22372 AFFIRMING THE FIRST CIRCUIT COURT FINAL JUDGMENT ENTERED ON APRIL 29, 1999

NO. 22372

IN THE INTERMEDIATE COURT OF APPEALS
THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	)	CIV. NO. 96-5126
Petitioner- Plaintiff- Appellant,	)	APPEAL FROM THE
vs.	)	FIRST
RICHARD ALLYN MOODY, Individually and as President or Former President of ALOHA CONFERENCING SERVICES INC., CABLE & WIRELESS, INC.,	)	CIRCUIT COURT
Defendants-Appellees,	)	

NOTICE AND JUDGMENT ON APPEAL

TO THE HONORABLE PRESIDING JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII:

PLEASE TAKE NOTICE the following Judgment on Appeal is entered this date by the Intermediate Court of Appeals of the State of Hawaii:

Pursuant to the opinion of the Intermediate Court of Appeals entered on December 29, 1999, the Final Judgment of the First Circuit Court entered on April 29, 1999 is affirmed.

DATED: Honolulu, Hawaii; February 25, 1999.

APPROVED: /s/JAMES S. BURNS
Chief Justice

BY THE COURT: /s/ L. NAKAGAWA
CLERK

APPENDIX B-2 —ORDER DENYING MOTION TO EXPEDIATE [sic] APPEAL AND REQUEST FOR STAY OF JUDGMENT FILED JAN. 25, 2000

NO. 22372
IN THE INTERMEDIATE COURT OF APPEAL
OF THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	)	CIV. NO. 96-5126
Plaintiff- Appellant	)	APPEAL
vs.	)	FROM
	)	THE FIRST
RICHARD MOODY, Individually and as President or Former President of ALOHA CONFERENCING SERVICES) INC., CABLE & WIRELESS, INC.,	)	CIRCUIT COURT
Defendants- Appellee	)	

ORDER RE: MOTION TO EXPEDIATE [sic] APPEAL AND REQUEST FOR STAY OF JUDGMENT

This Court's Memorandum Opinion deciding this appeal and affirming the judgment having been filed on December 29, 1999, the August 3, 1999 Motion to Expedite [sic] Appeal and Request for Stay of Judgment filed by Plaintiff-Appellant Dorothy Soo-Kiu Moody is dismissed for mootness

DATED: Honolulu, Hawai'i, January 25, 2000.

/s/ JAMES S. BURNS
Chief Judge

On the motion:
Dorothy Soo-Kiu Moody,
Plaintiff-Appellant, Pro Se

APPENDIX B-3 — MEMORANDUM OPINION
12/29/1999

NO. 22372
IN THE INTERMEDIATE COURT OF APPEAL
OF THE STATE OF HAWAII

DOROTHY SOO-KIU MOODY, aka DOROTHY SOO-KIU LAM,	)	CIV. NO. 96-5126
Plaintiff- Appellant	)	APPEAL FROM
vs.	)	THE FIRST CIRCUIT
RICHARD MOODY, Individually and as President or Former President of ALOHA CONFERENCING SERVICES INC., CABLE & WIRELESS, INC.,	)	COURT
Defendants- Appellee	)	

MEMORANDUM OPINION

Plaintiff-Appellant Dorothy Soo-Kiu Moody, also known as Dorothy Soo-Kiu Lam (Dorothy), appeals the circuit court's April 29, 1999 Final Judgment. More particularly, Dorothy challenges the following of the ciiircuit court's orders: (a) July 16, 1998 order granting summary judgment in favor of Defendant-Appellee Richard Moody (Richard); (b) August 6, 1998 order granting summary judgment in favor of Defendants-Appellees Aloha Conferencing Services, Inc. (ACSI), and Cable & Wireless, Inc. (CAWI); (c) November 27, 1998 order requiring Dorothy to pay specified costs and attorney fees to Richard; (d) February 22, 1999 order requiring Dorothy to pay costs and specified attorney fees to ACSI and CAWI; and (e) April 26, 1999 order requiring Dorothy to pay specified costs to ACSI and CAWI. We affirm.

BACKGROUND

Dorothy and Richard were married on May 15, 1985. Their daughter was born on October 10, 1987, and their son was born on April 10, 1992.

ACSI, a telephone conferencing company, was incorporated on July 21, 1988. Richard was the President and Treasurer. Dorothy was the Vice-President and Secretary. All 700,000 shares were in Richard's name. He paid for them with an investment of $35,000 capital and $15,000 surplus.

On June 30, 1995, Richard sold 90% (630,000 shares) of the 700,000 shares of ACSI to CAWI. A June 30, 1995 post-stock sale Shareholder's Agreement between Richard and CAWI specified that: (1) CAWI would name three of the four directors and Richard would name one; (2) Richard would be the initial Chief Executive Officer of ACSI "subject to the Articles of Incorporation and the By-Laws of the Company"; (3) the right of Richard and CAWI to buy all of the other's stock for a price computed according to a set formula; (4) Richard's agreement not to transfer the remaining 10% (70,000 shares) to anyone other than CAWI; and (5) the Shareholder's Agreement would terminate upon the ownership of all the ACSI's stock by Richard or CAWI.

The gross sales price of the 630,000 shares was $4,016,120. The attorney fees were $16,120. The income tax payable by Richard was $1,209,601. After payment of two expenditures for the benefit of Dorothy and two mortgages, the net remaining was $1,967,917.

On November 13, 1995, in FC-D No. 95-42254, Dorothy sued Richard for a divorce.

On November 20, 1995, Richard and Dorothy entered into a Security Interest Assignment Agreement (SIAA), stating

in relevant part as follows:

> [Richard] recognizes that one half (1/2) of his [70,000] shares of common stock in [ACSI] should be given to [Dorothy] as part of her share of the marital assets, but is unsure at this point, whether he is allowed to transfer 35,000 shares of his common stock in [ACSI] directly to [Dorothy] without violating the terms and conditions of the [June 30, 1995] Shareholders' Agreement as aforementioned.

> [Richard] will assign and/or transfer to [Dorothy], 35,000 shares of the 70,000 shares of common stock in [ACSI] now in his name, and [Dorothy] will receive this stock subject to the terms of [Richard's] Shareholder's Agreement entered into on June 30, 1995 with [CAWI]. If, however, the aforementioned assignment and/or transfer would be in violation of [Richard's] Shareholder Agreement and the transaction would not be authorized by [CAWI], [Richard] agrees to enter into this separate agreement with [Dorothy] whereby she will receive from [Richard] the aforementioned 35,000 shares or the value thereof when [Richard] sells, transfers or otherwise disposes of his stock interest in [ACSI]. It is the intent of both parties of this agreement that [Dorothy] receives her 50% share of [Richard's] 70,000 shares of common stocks in [ACSI].

By letter dated November 24, 1995, Dorothy advised CAWI that "I would like to exert. My right as 5% owner of [ACSI] in beneficiary interest." On February 6, 1996, the General Counsel for CAWI wrote a letter to Dorothy and Richard advising them that Richard's agreement to assign and/or transfer 35,000 shares of stock to Dorothy 'violates the Shareholder's Agreement. Also, in accordance with the Shareholder's Agreement, the 'assignment and/or transfer' is null and void and of no effect."

On December 11, 1995, pursuant to the agreement of the parties, the family court entered a Divorce Decree that divorced the parties finally decided all aspects of the case. No spousal support was awarded. The property division awarded each party approximately one-half of the total net value distributable. Dorothy was awarded $1,000,000 in net cash after taxes from the proceeds of Richard's sale of ACSI to CAWI plus a little more than $1,000,000 in assets, including the $222,222 estimated valued of her one-half of the 10% of the ACSI stock. The above-quoted paragraph of the SIAA relevant to Dorothy's interest in 35,000 shares (one-half of 70,000 shares) of ACSI was quoted in the Divorce Decree. The Divorce Decree did not reserve the final division of the property of the parties.

On June 7, 1996, citing Rule 60 of the Hawai'i Family Court Rules (HFCR), Dorothy moved to set aside the Divorce Decree. Dorothy alleged that "[t]he total amount received from the sale of stock was in fact $4,742,592" and that her one-half share should have been $2,371,296 and that "[w]e both should only pay taxes on each of our [one-half] shares... [M]y CPA has computed that my taxes on my [one-half] would be only $562,760 [rather than one-half of $1,209,601 or $604,800.50] which means that I should have netted $1,808,530." The record contains a May 8, 1996 letter from "Tax Strategies" stating in relevant part, "If you are only required to pay 50% of the tax on the capital gain from the sale of the business, ..., the taxes are ...$562,766." Dorothy did not explain how Richard, as the registered owner of all of the ACSI shares at the time of their sale, could have avoided being taxed on all of the profit realized from the sale.

Dorothy admitted that she "signed the decree on 11/20/95 over objection by [her] attorney." Nevertheless, she requested the court to

> Order [Richard] to pay [Dorothy] the $550,000 which

he is holding [to pay for a part of her one-half of the taxes] and to pay all my taxes on the transaction plus give [Dorothy] the difference in what [Dorothy] would have netted after paying all the taxes, or in the alternative, set aside the [Divorce Decree] as being fraudulent, inequitable, and entered into under duress or a mistake of fact, and have [Richard] give me 1/2 the proceeds from the sale of the 90% stock and we each pay our own taxes.

The family court's July 5, 1996 order denied Dorothy's motion and stated in relevant part as follows: "The Court finds there is no basis for granting [Dorothy's] Relief under Rule 60(b)(1)-(6). [Richard] is awarded reasonable attorney's fees and costs associated therewith. [Dorothy] shall pay said attorney's fees and costs upon presentation."

On July 12, 1996, Dorothy moved for reconsideration of the family court's July 5, 1996 order. In the memorandum in support of her motion, she stated in relevant part as follows:

> Due to the foregoing facts: (1) the duress and undue influence perpetrated upon me by my husband at the time I signed the decree, (2) my depressed emotional state after finding out about [Richard's] affair(s), (3) my hurt and vengeful state of mind at the time, (4) Defendant's representations that the division was 50-50 to me and my attorney, (5) the mistake of fact as to the tax law, (6) my affidavit for the uncontested divorce which states my belief that there was no deviation from uniform starting points, I[.]e. that the property division was equal as to marital assets, (7) [Richard's] omission in his Asset and Debt Statement of $2,000,000, 10% stock valued at $400,000 minimum, and his over $250,000 per year employment contract, (8) [Richard's] understatement, under penalty of perjury, of his monthly income by at least 50%, (9) the fact that I got no alimony or offset therefor although I haven't worked for over 4 years because of

> [Richard's] fraud and unconscionable manipulation of me and our assets, and (10) [Richard's] disqualification of my attorney because he claimed that he was his attorney; this Court should set aside the [Divorce Decree] under Rule 60(b) and five me a hearing to get a fair division of assets and support.

The family court's August 12, 1996 order denied Dorothy's motion for reconsideration and awarded reasonable attorney fees and costs to Richard, plus interest from August 8, 1996. On January 30, 1998, (a) in Dorothy's appeal no. 20021, this court affirmed the family court's July 5, 1996 Order Granting Defendant's Motion and Affidavit for Post-Decree Relief; (b) in Dorothy's appeal no. 20085, this court affirmed the family court's August 12, 1996 Order Denying [Plaintiff's] Motion for Reconsideration of Decision Announced 6/24/96; and (c) in Dorothy's appeal not. 20195, this court affirmed the family court's October 1, 1996 Order Re: Child Custody, Visitation and Related Issues and the October 3, 1996 Order Denying Plaintiff's Motion for Reconsideration of Decision Announced 9/6/96 Without Hearing.

On November 11, 1996, CAWI notified Richard of its intent to exercise its option to purchase the remaining 10% (70,000) of the ACSI shares from Richard. There is not evidence in the record that the conveyance and payment actually occurred.

On December 13, 1996, attorney Ronald G. S. Au filed Dorothy's Complaint in the instant case against Richard, ACSI, and CAWI alleging in relevant part

> 5... [Dorothy] and [Richard] were husband and wife at the time of the incorporation [of ACSI], and it was agreed that [Richard] would hold all shares of stock in [ACSI] in his name, and that fifty percent (50%), or one half (1/2) of all common and preferred stock of [ACSI] would be held in constructive

trust for the benefit of [Dorothy].

8. Defendant [CAWI] agreed, on or about June 30, 1995, to purchase Six Hundred Thirty Thousand (630,000) common stock shares of the company, which shares represented ninety percent (90%) of [ACSI] for the purchase price of Four Million Sixteen Thousand and one Hundred Twenty Dollars ($4,016,120.00). [Richard] retained Seventy Thousand (70,000) common stock shares, which represented ten percent (10%) of [ACSI].

9. Included in the purchase by [CAWI] was an employment agreement given to [Richard] dated June 30, 1995, employing [Richard] for five (5) years commencing on July 1, 1995, and ending on June 30, 2000, to include an annual base salary of One Hundred Twenty five Thousand Dollars ($125,000.00), to include employee benefits and an annual bonus as specified in the employment agreement.

12. [Richard] and [Dorothy], on November 20, 1995, entered into a Security Interest Assignment Agreement where [Richard] would assign Thirty Five Thousand (35,000) shares of common stock of [ACSI] to [Dorothy] ...

13. [Richard] has breached the constructive trust as to the shares of common stock held by [Richard] for the benefit of [Dorothy], which the [sic] breach includes but is not limited to the following:

A Entering into the sale of ninety percent (90%) of the shares of stock of [ACSI] without safeguarding the rights and title to the common stock held in trust for [Dorothy].

B .Entering into agreements with [CAWI] that substantially prejudiced [Dorothy] without the written authorization of [Dorothy].

C. Entering into a shareholders agreement to prejudice [Dorothy]
, as a shareholder, without the written authorization of [Dorothy].

D Obtaining present and future benefits in [ACSI] disregarding the rights and title to stock held in onstructive trust for [Dorothy].

E. Obtaining tax benefits in the sale to the substantial financial prejudice to [Dorothy].

14. That as a result of [Richard's] breach of the constructive trust, and the knowledge and collusion of [CAWI], [Dorothy] has sustained special and general damages that will be proven at trial.

39. That as a result of the mismanagement of [ACSI] by [Richard], as President, and [CAWI], [Dorothy] has sustained special and general damages to be shown at trial.

45. [Dorothy] requests the Court to compel [ACSI], [Richard] and [CAWI] to transfer fifty percent (50%) of the shares [Richard] holds in trust for the benefit of

[Dorothy] immediately, and that [Dorothy] is entitled to all benefits of a shareholder of [ACSI] retroactive from the date of the purchase agreement, June 30, 1995, to include dividends and that the legal interest on all dividends, and such other relief as may be proven at trial.

Dorothy's Complaint alleged a breach of constructive trust collusion, intentional or negligent misrepresentation, fraudulent inducement, fraud, intentional or negligent entrustment, mismanagement, and breach of fiduciary duty, and sought specific performance, joint and several punitive

damages, treble damages, and emotional distress damages.

In her pretrial statement filed on August 12, 1997, Dorothy alleged in relevant part as follows:

> [Richard] colluded with [CAWI] that after the sale, [Dorothy] would receive no interest and [Dorothy] would not be permitted to obtain any stock in the company. After [Dorothy] first learned that [CAWI] and [Richard] had colluded to divert her financial interest in [CAWI], [Dorothy] commenced the underlying complaint. In further collusion and fraud [CAWI] has since terminated [Richard's] employment and [CAWI] to date has not disclosed any contracts, agreement of employment and correspondence with [Richard] in the acquisition of [ACSI].

On July 16, 1998, the circuit court entered an order Granting Richard's motion for summary judgment based on *res judicata* principles.

On August 6, 1998, the circuit court entered an order granting the motions for summary judgment by CAWI and ACSI based on *res judicata* and collateral estoppel principles.

On November 27, 1998, the circuit court decided that Richard is the prevailing party, Dorothy's action is in the nature of assumpsit, Hawai'i Revised Statutes (HRS) ß607-14 is applicable, and ordered Dorothy to pay Richard $2,759.24 costs and $16,770 attorney fees.

On February 22, 1999, the circuit court entered its order granting to ACSI and CAWI costs and a total of $47,056.62 attorney fees (including 4% general excise tax). The bases of the award were HRS ßß607-9 (governing costs) and –14 (governing attorney fees in actions in the nature of assumpsit).

On March 8, 1999, Dorothy filed her motion for equitable relief from the orders entered on July 16, 1998, August 6, 1998, November 27, 1998, and February 22, 1999. Citing Hawai'i Rules of Civil Procedure (HRCP) Rule 60 (b), Dorothy alleged that Circuit Court Judge Kevin Chang was personally biased and prejudiced against her and in favor of ACSI and CAWI. She contended that her civil case does not challenge the Divorce Decree. Rather, it challenges Richard's pre-divorce transactions with CAWI for the sale of the ACSI shares that she alleges were worth no less than $10,000,000. She alleges that Richard intentionally and unjustly enriched himself by the sale and that she was the victim of misrepresentation, concealment, and fraud by Richard, ACSI, and CAWI.

On March 17, 1999, Dorothy filed a document amending her March 8, 1999 motion by adding a request for an injunction restraining the sale and for an order requiring the deposit of the ACSI stock with the court or a stay of execution pending interlocutory appeal. The amendment also added a citation to HRCP Rules 52(b)1 and 59. 2

On March 24, 1999, Dorothy filed a notice of appeal from the orders of July 16, 1998, August 6, 1998, November 27, 1998, and February 22, 1999.

On April 26, 1999, the circuit court entered an order awarding ACSI and CAWI costs of $6,212.86.

On April 26, 1999, the circuit court entered an order denying Dorothy's March 8, 1999 motion.

On April 29, 1999, the circuit court entered a Final Judgment in relevant part as follows:

[Dorothy's] Complaint filed on December 13, 1996 is dismissed with prejudice. There are no remaining

claims between the parties.

[Richard] is awarded a judgment in his favor and against [Dorothy] in the amount of $19,529.24, for attorneys' fees ($16,770.00) and costs ($2,759.24), plus interest accruing form the date hereof at the rate of 10% per year.

[CAWI] and [ACSI] are awarded a judgment in their favor and against [Dorothy] in the amount of $53,269.48, for attorneys' fees ($47,056.62) and costs ($6,212.86) plus interest accruing from the date hereof at the rate of 10% per year.

On April 30, 1999, Dorothy filed an amended notice of appeal.

I THE SUMMARY JUDGMENTS

A Summary of the Relevant Facts

Each of the following occurred during the marriage: the alleged constructive trust, the sale of the 630,000ACSI shares (90%) by Richard to CAWI, Richard's alleged breach of the alleged constructive trust, and the SIAA. The Divorce Decree, which was agreed to by the parties, finally divided the property {assets and liabilities) of the parties, including the proceeds of the sale of ACSI and the rights flowing from the remaining 70,000

Hawai'i Rules of Civil Procedure (HRCP) Rule 52(b) states in relevant part that "[u] pon motion of a party made not later tthan 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59."

HRCP Rule 59 pertains to motions for a new trial and motions to alter or amend the judgment. Both are required to be served not later than 10 days after entry of the judgment.

shares (10%) of ACSI as specified in the Shareholder's Agreement and the SIAA. Dorothy's HFCR Rule 60 (b) motion alleging Richard's fraud, duress, and concealment, Dorothy's mistake of fact, and the inequity of the Divorce Decree, and seeking an order setting aside the Divorce Decree was denied by the family court's July 5, 1996 order. The family court's August 12, 1996 order denied Dorothy's motion for reconsideration of the July 5, 1996 order.

Thereafter, on December 13, 1996, more than one year after the entry of the December 11, 1995 Divorce Decree, Dorothy filed the complaint in this case against Richard, ACSI, and CAWI alleging that: (1) by agreement of Dorothy and Richard during the marriage, Richard held title to one-half of his ACSI shares as constructive trustee for Dorothy, and when Richard sold those shares on June 30, 1995 for the consideration he agreed to, he breached his fiduciary duties to Dorothy, and ACSI and CAWI colluded with Richard in that breach; and (2) from and after June 30, 1995, Dorothy had an equitable right to 35,000 ACSI shares (5%) and the rights that go with them and, during that period of time, her equitable rights to those 35,000 ACSI shares were violated.

The Relevant Principles of Law

A constructive trust is a trust created by operation of law. Davis v. Howard, 19 Or. App. 310, 313, 527 P.2nd 422, 424 (1974).

An express trust and a constructive trust are not divisions of the same fundamental concept. They are not species of the same genus... A constructive trust does not, like

an express trust, arise because of a manifestation of an intention to create it, but is imposed as a remedy to prevent unjust enrichment.Lee v. Wong, 57 Hw. 137, 142, 552 P.2d 635, 639 (1976) (citation omitted).

Combined, HRS ßß 580-47 (a) and –56 (d) specify that a divorce decree finally divides and distributes the estate of the parties, and neither party is entitled to any part of the other's estate upon the following event: (a) if the divorce decree does not reserve the final division of property of the parties, then upon the entry of the divorce decree; or (b) if the divorce decree reserves the final division of property of the parties, then upon the entry of the order finally dividing the property of the parties or the elapse of one year following the entry of the divorce decree.

In limited circumstances, the jurisdiction the family court lost by application of the above rules may be resurrected in accordance with HFCR Rule 60 (b) in relevant part as follows:

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud. On motion and upon such terms as are just, the court any relieve a party of his legal representative from any or all of the provisions of a final decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (d) (2); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party

This court has concluded that

[t]he doctrine of *res judicata* essentially provides that [t]he judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated

in the first action, but also of all grounds of claim or defense which might have been properly litigated in the first action but were not litigated or decided.

Hall v. State, 7 Haw. App. 274, 281, 756 P.2d 1048, 1054 (1988) (citation and footnote omitted).

The Hawai'i Supreme Court has concluded that

the doctrine of collateral estoppel bars relitigation of an issue where: (1) the issue decided in the prior adjudication ais identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication [.]

Dorrance v. Lee, 90 Hawai'i 143, 149, 976 P.2d 904, 910 (1999).

Our Decision

In Epp v. Epp, 80 Hawai'i 79, 84, 905 P.2d 54, 59 (App. 1995), this court stated, "With respect to marriages, three relevant agreements between the marital partners are possible: (1) premarital or antenuptial agreements in contemplation of marriage (premarital agreements); (2) during-the-marriage agreements not in contemplation of divorce (marital agreements); and (3) during-the-marriage agreements in contemplation of divorce (divorce agreements)."

We conclude that Dorothy has alleged an oral marital trust agreement rather than a constructive trust. If this marital trust agreement was not a valid contract, Dorothy's claim has no merit. If this marital trust agreement was a valid contract, it was Dorothy's sand Richard's asset/liability at the time of the divorce.

It is the family court's duty under HRS ß 580-47 (1993) to finally divide and distribute "the estate of the parties, real, personal, or mixed, whether community, joint, or separate [.]" This court has defined the "estate of the parties" as "anything of present or prospective value [.]" Linson v. Linson, 1 Haw. App. 272, 278, 618 P.2d 748, 751 (1980). When a husband and wife divorce, each must disclose everything of present or prospective value, positive and negative, including all claims either has against the other and/or against any other person or entity. This includes a duty to disclose all marital trust agreements. Absent this disclosure, the family court cannot comply with its duty under HRS 580-47 (a).

When a husband and a wife divorce, the family court awards joint and separate assets and liabilities to one or the other or both. These assets and liabilities include whatever claims one spouse has against the other and/or against any other person or entity. Thus, if one spouse has a claim against the other spouse, including, but not limited to, a claim for a breach of a marital trust agreement, it is within the family court's discretion, when dividing the assets and liabilities of the parties in the divorce case, to award a percentage of both the asset and the liability to each party.

What happens when one spouse **intentionally, knowingly, or negligently fails to disclose** a contract, tort, or other type of claim against the other spouse and/or against a third-party and the family court does not award the claim in the divorce decree? Does the non-disclosing spouse benefit from the nondisclosure by retaining the claim(s) for future determination and collection? **We conclude that: (1) HRS ßß 580-47 (a) and –56 (d) and *re judicata* principles dictate that the claim by the non-disclosing spouse against the other spouse becomes unenforceable when the family court loses jurisdiction to award it; and (2) HFCR Rule 60 (b) does not authorize relief in this situation because it authorizes relief only in situations involving "excusable neglect," "newly**

discovered evidence which by due diligence could not have been discovered in time," or fraud.

Applying these rules to the facts in this case, we conclude that Dorothy is **barred** from pursuing the claims alleged in her December 13, 1996 Complaint because those claims were either (a) **actually litigated and decided** by the December 11, 1995 Divorce Decree, the July 5, 1996 Order denying Dorothy's HFCR Rule 60 (b) motion, and/or the August 12, 1996 order denying Dorothy's motion for reconsideration, or (b) were not litigated in the divorce case and decided by the above Divorce Decree and/or orders **because Dorothy intentionally, knowingly, or negligently failed to disclose them.**

We further conclude that HRCR Rule 60 (b) does not permit Dorothy to pursue her claim against third-parties CAWI and ACSI because (a) HFCR Rule 60 (b) does not provide relief from the consequences of an **intentional, knowing, or negligent failure to disclose,** or (b) Dorothy **cannot** pursue her claim against Richard and the claim against CAWI and ACSI is based on their alleged collusion with Richard.

Dorothy's claim against Richard is also barred by the language in paragraph 4m of the Divorce Decree that "[n]either party shall have any claim to the other party's estate except as specifically provided herein."

With respect to ACSI and CAWI, Dorothy contends that collateral estoppel does not apply to a "consent judgment." She cited Modern views of State Courts as to Whether Consent Judgment is Entitled to Res Judicata or Collateral Estoppel Effect, 91 ALR3d 1170, 1187-8 (1979). Our review of this Annotation reveals that it contains more authority against Dorothy's position that in support of it.

II

The November 27, 1998 Order Re Fees and Costs ordered Dorothy to pay Richard $2,759.24 for costs and $16,770 for attorney fees. The February 22, 1999 Order Re Fees and Costs ordered Dorothy to pay ACSI and CAWI $47,056.62 for attorney fees. The April 26, 1999 Order Re Fees and Costs ordered Dorothy to pay ACSI and CAWI $6,212.86 for costs. Each of the above orders was supported on the court's conclusions that Dorothy's Complaint alleged a cause of action in the nature of assumpsit, and HRS ß 607-14 (1998) authorized the award of fees and costs in such cases.

"Assumpsit" is "a common law form of action which allows for the recovery of damages for the non-performance of a contract, either express or implied, written or verbal, as well as quasi contractual obligations." Schulz v. Honsador, Inc., 67 accord, S. Utsunomiy Enterprises, Inc. v. Moomuku Country Club, 76 Hawai'i 396, 399-400, 879 P.2d 501, 504-505 (1994); see also, Eastman v. McGowan, 86 Hawai'i 21, 29-31, 946 P.2d 1317, 1325-27 (1997).

The Hawai'i Supreme Court has "defined assumpsit as a 'common law form of action which allows for the recovery of damages for the non-performance of a contract, either express or implied, written or verbal, as well as quasi contractual obligations.'" ID. At 31, 946 P.2d at 1327 (1997) (emphasis in the original) (citations omitted).
The Hawai'i Intermediate Court of Appeals has added that

[a]t common law, however, the action of assumpsit included more than merely an action for damages arising from breach of contract and would like on a contract even where a sum certain was sought. Where a contract has been fully performed and nothing remains to be done but to pay the money, a recovery may be had in general assumpsit at the plaintiff's election. See 1 AM.JUR. 2d, Actions, ß11, et seq.

(1962).

Bishop Trust Company, Ltd. v. Central Union Church of Honolulu, 3 Haw. App 624, 630-31, 656 P.2d 1353, 1357-58 (1983).

We conclude that a cause of action for breach of an oral marital trust agreement is a cause of action in the nature of assumpsit.

Dorothy argues that it is gross, unfair, and unreasonable to order her to pay attorney fees and costs because (a) she did not have an evidentiary trial and (b) CAWI is a rich corporation and she is a poor woman. We conclude that the circuit court did not abuse its discretion.

CONCLUSION

Accordingly, we affirm the circuit court's April 29, 1999 Final Judgment.

DATED: Honolulu, Hawai'i, December 29, 1999.

/s/ JAMES S. BURNS
Chief Judge

/s/ CORINNE K. A. WATANABE
Associate Judge

/s/ JOHN S. W. LIM
Associate Judge

Dorothy Soo-Kiu Moody
Aka Dorothy Soo-Kiu Lam,
Plaintiff-Appellant Pro se.

Richard A. Moody,
Defendant-Appellee Pro se.

Nadine Y. Ando and
Christopher J. Cole
(McCorriston Miho Miller Mukai)
for Defendant -Appellees
Aloha Conferencing Inc.,
and Cable & Wireless In

APPENDIX C-1 FINAL JUDGMENT APRIL 29, 1999

McCORRISTON MIHO MILLER MUKAI

NADINE Y. ANDO #3158-0
CHRISTOPHER J.COLE #5781-0
Attorneys for Defendants
Aloha Conferencing Inc., and
Cable & Wireless, Inc.

NO. 96-5126-12

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	)	CIV. NO. 96-
	)	5126-12
Plaintiff,	)	(Contract)
	)	FINAL
vs.	)	JUDGMENT
	)	
RICHARD ALLYN MOODY, Individually	)	TRIAL
And as President or Former President of	)	DATE:
ALOHA CONFERENCING SERVICES INC)		September
CABLE & WIRELESS, INC., JOHN DOE	)	14, 1998
1-10, DOE CORPORATION 1-10, DOE	)	
ENTITY 1-10	)	
Defendants.	)	
	)	

FINAL JUDGMENT

Pursuant to Rule 58 of the Hawaii Rules of Civil Procedure, final judgment in this action is hereby entered in favor of the Defendants Richard Moody, Cable & Wireless, Inc. and Aloha Conferencing Services, Inc., and against Plaintiff Dorothy Soo-Kiu Moody, as follows:

Plaintiff's Complaint filed on December 13, 1996 is dismissed with prejudice. There are no remaining claims between the parties.

Defendant Richard Moody is awarded a judgment in his favor and against Plaintiff in the amount of $19,529.24, for attorneys' fees ($16,770.00) and costs ($2,759.24), plus interest accruing from the date hereof at the rate of 10% per year.

Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc. are awarded a judgment in their favor and against Plaintiff in the amount of $53,269.48, for attorneys' fees ($47,056.62) and costs ($6,212.86), plus interest accruing from the date hereof at the rate of 10% per year.

DATED: Honolulu, Hawai'i; April 29, 1999

/s/KEVIN S.C. CHANG
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ DOROTHY SOO-KIU LAM aka
DOROTHY SOO-KIU MOODY
Plaintiff Pro Se

/s/ STEPHEN T. HIOKI, ESQ.
Attorney for Defendant
Richard Moody

APPENDIX C-2 — ORDER DENYING PLAINTIFF'S "MOTION FOR EQUITABLE RELIEF FROM MISTAKES OF JUDGMENT, RE-SET FOR JURY TRIAL TO BE CONSISTENT WITH DUE PROCESS AND LAW FILED APRIL 26 , 1999

McCORRISTON MIHO MILLER MUKAI
NADINE Y. ANDO #3158-0
CHRISTOPHER J.COLE #5781-0
Attorneys for Defendants
Aloha Conferencing Inc., and
Cable & Wireless, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO.
	) 96-5126-12
Plaintiff,	) (Contract)
vs.	) HEARING:
RICHARD ALLYN MOODY,	) Judge Kevin
individually And as President or Former	) Chang
President of ALOHA CONFERENCING ,	)TRIAL DATE
SERVICES INC., CABLE & WIRELESS,	) Sept 14, 1998
INC , JOHN DOE 1-10,	)
DOE CORPORATION 1-10,	)
DOE ENTITY 1-10	)
Defendants	)

ORDER DENYING PLAINTIFF'S "MOTION FOR EQUITABLE FELIEF FROM MISTAKES OF JUDGMENT GRANTING CORPORATE DEFENDANATS SUMMARY JUDGMENT & FEES/COSTS AWARD SETTING ASIDE ORDER 7-16098, 8-6-98, 11-27-98 AND UNFILED ORDER SIGNED 2-22-99; RE-SET THIS CASE FOR ADJUDICATION BY JURY TRIAL TO BE CONSISTENT WITH DUE PROCESS & LAW"FILED MARCH, 1999

Plaintiff's "Motion for Equitable Relief from Mistakes of Judgment Granting Corporate Defendants Summary Judgment & Fees/Costs Award Setting Aside Order 7-16-98, 8-6-98, 11-27-98 and Unfiled Order Signed 2-22-99; Re-Set this Case for Adjudication by Jury Trial to be Consistent with Due Process & Law", filed on March 8, 1999 (the "Motnioh"), having come on for hearing on March 31, 1999 at 10:30 a.m.: with Plaintiff Dorothy Soo-Kiu Moody, now known as Dorothy Lam appearing pro se; with Stephen Hioki, Esq. Appearing on behalf of Defendant Richard Moody; and with Christopher J. Cole, Esq. Appearing on behalf of Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc.; and the court having reviewed the Motion and the written submissions filed in support and opposition to be Motion, and having heard the arguments of Plaintiff Pro Se and counsel and being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiff's Motion is DENIED. Applying the standard set forth in Hawaii Rules of Civil procedure 60 (b), the court finds that Plaintiff has not set forth sufficient evidence to warrant relieving Plaintiff from the previously-entered orders filed on 7/16/98, 8/6/98, 11/27/98, and 2/22/99. In particular, Plaintiff has not-presented any legal support or factual evidence which shows any of the following: mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence; fraud, misrepresentation, or other misconduct; or that the judgment is void. Plaintiff's Motion is DENIED.

DATED: Honolulu, Hawai'i; April 26, 1999

APPROVED AS TO FORM
/s/Stephen T. Hioki , ESQ
Attorney for Defendant
Richard Moody

/s/KEVIN S.C. CHANG
JUDGE OF THE ABOVE-
ENTITLED COURT

/s/ DOROTHY SOO-KIU LAM aka
DOROTHY SOO-KIU MOODY, Plaintiff Pro Se

APPENDIX C-3 — ORDER DATED APRIL 26, 1999 GRANTING IN PART, AND DENYING IN PART, PLAINTIFF DOROTHY SOO-KIU MOODY'S MOTION OBJECTING TO DEFENDANTS ALOHA CONFERENCING, INC. AND CABLE & WIRELESS, BILL OF TAXABLE COSTS FILED JULY 29, 1999

McCORRISTON MIHO MILLER MUKAI
NADINE Y. ANDO #3158-0
CHRISTOPHER J.COLE #5781-0
Attorneys for Defendants
Aloha Conferencing Inc., and
Cable & Wireless, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO.
	) 96-5126-12
Plaintiff	) (Contract)
vs	) Judge Kevin Chang
	) Trial Date:9/14/98
RICHARD MOODY,Individually	)
and as President or Former President of	)
CONFERENCING SERVICES,	)
INC., CABLE & WIRELESS, INC.,	)
Defendant	)

ORDER GRANTING IN PART, AND DENYING IN PART, PLAINTIFF DOROTHY SOO-KIU MOODY'S MOTION OBJECTING TO DEFENDANTS ALOHA CONFERENCING, INC. AND CABLE & WIRELESS, INC.'S BILL OF TAXABLE COSTS FILED JULY 29, 1998

Plaintiff's Motion Objecting to Defendants Aloha Conferencing, Inc. and Cable & Wireless, Inc.'s Bill of Taxable Costs filed July 22, 1998, filed on July 29, 1998 (the "Motion") having come on for hearing on August 20, 1998 at

8:30 a.m.; with Gerald Kurashima, Esq. Appearing for Plaintiff Dorothy Soo-Kiu Moody, who was also present, and with Christopher J. Cole, Esq. Appearing for Defendants Cable & Wireless, inc. and Aloha Conferencing Services, Inc.; and this Court having reviewed the motion, and the written submissions filed in support and opposition to the motion, and having heard the arguments of counsel and being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiff's Motion is GRANTED IN PART AND DENIED IN PART, as follows:

Pursuant to the court's minute order and the Order Granting Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc.'s Motion for Summary Judgment Filed on 5/21/98, filed August 6, 1998, the court finds that Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc. are prevailing parties and that Plaintiff is the losing party in this action.

Pursuant to Haw. Rev. Stat. ß607-9, the court allows Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc. the following reasonable items of costs incurred in this action:

Fees for services of summons and subpoena	$ 24.50
Deposition transcription fees	3,966.28
Fees for photocopies	1,914.68
Fees for witnesses	12.50
Telephone	291.90
Notary fees	3.00

The court finds that the foregoing items of costs were reasonable and were necessarily incurred by Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc. in the defense of Plaintiff's claims in this action.

The court sustains Plaintiff's objections to the following items of costs, because they do not appear reasonable and necessarily incurred based on the record presented:

Courier	$	26.13
Facsimile		274.08
Travel		$3,659.07

Based on the record presented, the Plaintiff's Motion is GRANTED IN PART in the amount of $3,959.28 as described above, and DENIED IN PART in the amount of $6,212.86, as described above.

Defendants Cable & Wireless, Inc. and Aloha Conferencing Services, Inc. are awarded reasonable costs in the total amount of $6,212.86 against Plaintiff Dorothy Soo-Kiu Moody.

DATED: Honolulu, Hawai'i, April 26, 1999.

/s/ KEVIN S.C. CHANG
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ DOROTHY SOO-KIU LAM
Plaintiff Pro Se

APPENDIX C-4 — ORDER DATED FEB 22, 1999 DENYING PLAINTIFF DOROTHY SOO-KIU LAM'S MOTION REQUESTING DISQUALIFICATION OF JUDGE CHANG, FILED ON NOVEMBER 24, 1998

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO.
	) 96-5126-12
Plaintiff-	)
	) Judge Nakatani
v.s.	) Trial Date:9/14/98
RICHARD MOODY, Individually	)
and as President or Former President of	)
ALOHA CONFERENCING INC.;	)
and CABLE & WIRELESS INC	)

ORDER DENYING PLAINTIFF DOROTHY SOO-KIU LAM'S MOTION REQUESTING DISQUALIFICATION OF JUDGE CHANG, FILED ON NOVEMBER 24, 1998

Plaintiff Dorothy Soo-Kiu Lam's Motion Requesting Disqualification of Judge Chang, filed on November 24, 1998, came on for hearing before the Honorable Gail C. Nakatani on January 20, 1999, at 10:00 a.m. Present at the hearing were Dorothy Soo-Kiu Lam, Plaintiff Pro Se and Nadine Y. Ando, attorney for Defendants Aloha Conferencing, Inc. and Cable & Wireless, Inc.

The Court having considered the moving papers and the memoranda filed by the parties, and the Court being fully advised in the premises, hereby orders that Plaintiff Dorothy Soo-Kiu Lam's Motion Requesting Disqualification of Judge Chang is denied.

DATED: Honolulu, Hawaii; February 22, 1999

/s/ GAIL C. NAKATANI
JUDGE OF THE ABOVE-COURT

APPENDIX C-5— ORDER DATED 2/22/99 GRANTING DEFENDANTS ALOHA CONFERENCING INC CABLE & WIRELESS, INC.'S MOTION ATTORNEYS FEES AND COSTS FILED SEPT 30, 1998

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO.
	) 96-5126-12
Plaintiff-	)
	) Judge Nakatani
v.s.	) Trial Date:9/14/98
RICHARD MOODY, Individually	)
and as President or Former President of	)
ALOHA CONFERENCING INC.;	)
and CABLE & WIRELESS INC	)

ORDER 2/22/99 GRANTING DEFENDANTS ALOHA CONFERENCING. INC.AND CABLE & WIRELESS, INC.'S MOTION FORATTORNEYS' FEES AND COSTS

Defendants Aloha Conferencing Inc., and Cable & Wireless, Inc.'s Motion for Attorneys' Fees and Costs, came on for hearing before the Honorable Gail C. Nakatani on January 20, 1999 at 10:00 a.m. Present at the hearing were Dorothy Soo-Kiu Lam, Plaintiff Pro Se ("Plaintiff") and Nadine Y. Ando, attorney for Defendants Aloha Conferencing, Inc. ("ACI") and Cable & Wireless, Inc. ("CWI").

The Court having considered the moving papers and the memoranda filed by the parties, and the Court being fully advised in the premises, hereby orders that ACI's and CWI's Motion for Attorneys Fees and Costs is granted for the reasons stated herein.

First, Plaintiff's untimely opposition is stricken and is

not considered by this Court. The opposition was required to be filed on or before January 29, 1999; however, it was filed on February 2, 1999 and received on February 3, 1999.

After considering the properly written submissions and the arguments of counsel and Plaintiff, the Court states the following with regard to ACI and CWI' motion:

Judge Kevin S.C. Chang of this Court previously ruled that Plaintiff's claims against Defendant Richard Moody are in the nature of an assumpsit. Since there are no claims against ACI and CWI which were not also asserted against Defendant Richard Moody, Plaintiff's claims against ACI and CWI are also in the nature of assumpsit. In addition, ACI and CWI's motion for summary judgment was granted. Accordingly, ACI and CWI are entitled to an award of reasonable attorney's fees and costs as

prevailing parties in accordance with Haw. Rv. Stat. ß607-9 and, due to the nature of Plaintiff's assumpsit claims, in accordance with Haw. Rev. Stat. 6607-14.

It is hereby further ordered that Defendants Aloha Conferencing Inc., and Cable & Wireless, Inc. are awarded reasonable attorney's fees against Plaintiff Dorothy Moody, except that their request of $1,500 for the preparation of the motion for fees is denied. The amount of the reasonable fees awarded is $47,056.62 ($45,246.75 + 4% general excise tax).

DATED: Honolulu, Hawaii; February 22, 1999

/s/ GAIL C. NAKATANI
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:
/s/Dorothy Soo-Kiu Lam
Plaintiff Pro Se

APPENDIX C-6— ORDER FILED NOVEMBER 27, 1998 GRANTING RICHARD MOODY FEES AND COSTS

STEPEHN T. HIOKI #2242
900 Fort Street Mall, Suite 835
Honolulu, Hawaii 96813
Telephone No. 523-0177
Attorney for Defendant Richard Moody

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO.
	) 96-5126-12
Plaintiff-	)
	) Judge K Chang
v.s.	) Trial Date:9/14/98
RICHARD MOODY, Individually	)
and as President or Former President of	)
ALOHA CONFERENCING INC.;	)
and CABLE & WIRELESS INC	)

ORDER RE DEFENDANT RICHARD MOODY'S MOTION FOR ATTORNYE'S FEES AND COSTS AGAINST PLAINFIFF DOROTHY SOO-KIU MOODY AND TO ALLOW RECOUPMENT AGAINST PAYMENT TO PLAINTIFF FROM PROCEEDS OF SALE OF STOCK AND DEVENDANTS ALOHA CONFERENCING INC. AND CABLE & WIRELESS, INC.'S JOINDER TO DEFENDANT RICHARD MOODY'S MOTION FOR ATTORNEY'S FEES AND COSTS AGAINST PLAINTIFF DOROTHY SOO-KIU MOODY AND TO ALLOW RECOUPMENT AGAINST PAYMENT TO PLAINTIFF FROM PROCEEDS OF SALE OF STOCK FILED ON 9/4/98

Defendant Richard Moody's Motion for Attorney's Fees and Costs Against Plaintiff Dorothy Soo-Kiu Moody and to Allow Recoupment Against payment to Plaintiff from

Proceeds of Sale of Stock filed on August 18, 1998 and Defendants Aloha Conferencing, Inc. and Cable & Wireless, Inc.'s joinder to Defendant Richard Mnoody's Motion for Attorney's Fees and Costs Against Payment to plaintiff from Proceeds of Sale of Stock

filed on August 18, 1998 filed on September 4, 1998, came on for hearing before the Honorable Kevin S. C. Chang on September 23, 1998 at 8:30 a.m. Present at the hearing were Dorothy soo-Kiu Moody, Plaintiff pro se; Stephen T. Hioki, attorney for Defendant Richard Mnoody; and Christopher J. Cole, attorney for Defendants Aloha Conferencing, Inc. and Cable & Wireless, Inc.

Arguments by the parties having been heard, the memorandum of law having been considered, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Defendant Richard Moody's Motion for Attorney's Fees and Costs Against Plaintiff Dorothy Soo-Kiu Moody and to Allow Recoupment Against Payment to Plaintiff from Proceeds of Sale of Sock filed on August 18, 1998 and Defendants Aloha Conferencing Inc. and Cable & Wireless, Inc.'s joinder to Defendant Richard Moody's Motion for Attorney's Fees and Costs Against Plaintiff Dorothy Soo-Kiu Moody and to Allow Recoupment Against Payment to Plaintiff from Proceeds of Sale of Stock filed on August 18, 1998 filed on September 4, 1998, is resolved as follows:

First, pursuant to the order granting Defendant Richard Moody's motion for summary judgment filed on July 16, 1998, the Court finds that Defendant Moody is the prevailing party and that Plaintiff Dorothy Moody is the losing party.

Second, the Court finds that Plaintiff's action against Defendant Moody is in the nature of assumpsit because Plaintiff

alleged, in pertinent part, (1) breach of an agreement between herself and her ex-husband, Defendant Moody, and (2) Plaintiff sought the imposition of a constructive trust for her benefit over stock in aloha Conferencing based on Defendant Moody's alleged breaches of agreement. See Bishop Trust Company, Ltd. Vs Central Union Church of Honolulu, j3 Haw. App. 624 (1983). Further, Plaintiff and her former counsel have, on occasion, characterized the instant litigation as involving a breach of contract.

Third, because the present action is in the nature of assumpsit, the Court further finds that HAW. REV. STATS. sec.607-14 is applicable and that Defendant Moody is entitled to recover reasonable attorney's fees in an amount not to exceed 25% of the amount of the recovery sought by Plaintiff. The Court finds that Defendant Moody's in the amount of $16,770.00 is reasonable, that the aforesaid attorney's fees were necessarily incurred by Defendant Moody in this action, and that the amount of $16,779.00 does not exceed 25% of the amount which was sought by Plaintiff.

Fourth, the Court finds, pursuant to HAW. REV. STATS. sec. 607-14, that Defendant Moody, as the prevailing party, is entitled to recover reasonable costs in the amount of $2,759.24 against Plaintiff.

Based on the foregoing, Defendant Moody's Motion for Attorney's Fees and Costs Against Plaintiff Dorothy Soo-Kiu Moody and to Allow Recoupment Against Payment to Plaintiff from Proceeds of Sale of Stock filed on August 18, 1998 is granted as follows:

Defendant Richard Moody is awarded attorney fees in the amount of $16,770.00 and court costs of $2,759.24 against Plaintiff.

2. The Court makes no ruling on the issues related to HAW. REV. STATS. sec. 607-14.5 and HAW. R. CIV. PROC. Rule 11; and, the source of the payment of the award of attorney's fees and costs; and,

The joinder filed by Defendants Aloha Conferencing, Inc. and Cable & Wireless, Inc. is denied without prejudice. The affidavit of counsel submitted in support of the joinder is insufficient to establish the reasonableness and necessity of the claimed approximate $43,000.00 of said Defendants' attorney's fees and costs. Said Defendants may refile their request with a more detailed and complete record.

DATED: Honolulu, Hawaii; Nov 27, 1998

/s/ Kevin Chang

JUDGE OF THE ABOVE-
ENTITLED COURT

APPENDIX C-7 — ORDER DATED AUGUST 6, 1998 GRANTING DEFENDANTS CALBE & WIRELESS, INC.AND ALOHA CONFERENCING SERVICES, INC.'SMOTION FOR SUMMARY JUDGMENT FILED MAY 21, 1998

McCORRISTON MIHO MILLER MUKAI
NADINE Y. ANDO #3158-0
CHRISTOPHER J.COLE #5781-0
Attorneys for Defendants
Aloha Conferencing Inc., and
Cable & Wireless, Inc.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO. 96-) 5126-12) (Contract)
Plaintiff-	)
	) Judge Kevin)Chang
v.s.	) Trial Date:9/14/98
RICHARD MOODY, Individually and as President or Former President of CONFERENCING SERVICES, INC., CABLE & WIRELESS, INC.	)

ORDER GRANTING DEFENDANTS CABLE & WIRELESS INC AND ALOHA CONFERENCING SERVICES INC'S MOTION FOR SUMMARY JUDGMENT FILED 5/ 21/ 1998

Defendants Cable & Wireless Inc and Aloha Conferencing Services Inc's motion for Summary Judgment having come on for hearing before the Honorable Judge Kevin Chang on July 9, 1998 at 10 am with Christopher Cole appearing for Defendants Cable & Wireless Inc and Aloha Conferencing Services Inc and with Ronald G.S. Au appearing for Plaintiff Doorothy Soo- Kiu

Moody (who was present also) and based on the motion and papers filed in support and opposition thereto, the arguments of counsel, and this Court's Minute Order dated May 15, 1998, and for good cause shown, IT IS HEREBY ADJUDICATED, ORDERED AND DECREE as follows:

The Court finds , viewing the facts and reasonable inferences in light most favourable to Plaintiff, there are no genuine issue of material facts concerning the applicability of the defenses of res judicata and collateral estoppel asserted against Plaintiff in this action by Defendants Cable & Wireless Inc (CWI) and Aloha Conferencing Services Inc (ACS), and that CWI and ACS are entitled to a judgment in their favor as a matter of law. This Court findings and conclusion in the Minute Order are adapted and incorporated herein by reference .

This court finds that there is no genuine dispute that CWI bought 90 % of the shares of strock in ACS from Defendant Richard Moody, and also bought an option to purchase the remaining 10% of the shares of stock in ACS from Defendant Richard Moody. This Court finds that CWI and ACS were in privity with Defendant Richard Moody, as a matter of law. Res judicata therefore implies to bar all of Plaintiff 's claims against CWI and ACS, and summary judgment in favor of CWI and ACS is appropriate on this ground.

Even if res judicata did not apply to bar all of Plaintiff 's claim in this action against CWI and ACS, the doctrine of collateral estoppel applies. This court finds that as a matter of law, the divorce decree in the Family Court proceeding between Plaintiff Dorothy Soo- Kiu Moody and Defendant Richard Moody (FC-D 95-4254) actually and finally determined both of their prospective rights in the shares of stock in ACS. Collateral estoppel thus bars Plaintiff's claim against CWI and ACS , and summary judgment is appropriate in favor of CWI and ACS on thios separate ground as well. Morneau v Stark, 56 Haw. 420, 424-5; 639 P 2d 472 (1975); Silver v Queen's Hospital, 63 Haw

430, 437 , 629 P 2d 1116 (1981), recons, denied, 63 Haw. 6776(1981).

It IS THEREFORE ORDERED that Defendants Cable & Wireless and Aloha Conferencing Services Inc is dismissed with prejudice.

DATED: Honolulu, Hawaii August 6 , 1998

/s/ Kevin Chang
Judge of the above Court

Approved As to Form
Ronald G.S. Au
Attorney for Plaintiff

APPENDIX C -8 ORDER DATED JULY 16, 1998 GRANTING DEFENDANT RICHARD MOODY SUMMARY JUDGMENT

STEPEHN T. HIOKI #2242
900 Fort Street Mall, Suite 835
Honolulu, Hawaii 96813
Telephone No. 523-0177
Attorney for Defendant Richard Moody

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	) CIV. NO. 96-
	) 5126-12
Plaintiff-	)
	) Judge K Chang
v.s.	) Trial Date:9/14/98
RICHARD MOODY, Individually	)
and as President or Former President of	)
ALOHA CONFERENCING INC.;	)
and CABLE & WIRELESS INC	)

ORDER GRANTING DEFENDANT RICHARD MOODY'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF DOROTHY SOO-KIU MOODY FILED ON 4/7/98 AND DNYING DEGENDANTS CABLE & WIRELESS, INC. AND ALOHA CONFERENCING, INC.'S JOINDER IN DEFENDANT RICHARD MOODY'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF DOROTHY SOO-KIU MOODY FILED ON APRIL 7, 1998 FILED ON 4/14/98

Defendant Richard Moody's Motion for Summary Judgment Against Plaintiff Dorothy soo-Kiu Moody filed on April 7, 1998, and the Defendants Aloha Conferencing, Inc. and Cable & Wireless Inc.'s Joinder in Defendant Richard Moody's Motion for Summary Judgment Against Plaintiff Dorothy Soo-

Kiu Moody Filed on April 7, 1998 filed on April 14, 1998, came on for hearing before the Honorable Kevin S. C. Chang on May 6, 1998 at 9:00 a.m.

Present at the hearing were Ronald G.S. Au, attorney for Plaintiff, Stephen T. Hioki, attorney for Defendant Richard Moody, and Christopher J. Cole, attorney for Defendants Cable & Wireless, Inc. and Aloha Conferencing, Inc. Arguments of counsel having been heard, the memoranda, affidavits, declarations, and attached documents having been considered, the ?Court being fully advised in the premises, and viewing the evidence and inferences in the light most favorable to Plaintiff, the Court finds that there are no genuine issues of material fact and that Defendant Richard Moody is entitled to judgment as a matter of law on Plaintiff's claims based on the following:

The doctrine of res judicata provides that "(t)he judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the (claims) which were actually litigated in the first action, but also all grounds of claim... which might have been properly litigated in the first action but were not litigated or decided." See Morneau vs. State Enterprises, Ltd., 56 Haw 420, 422-423, 539 P.2d 472, 474-75 (1975), quoting In re Bishop Estate, 36 Haw. 403, 416 (1943). In determining whether a litigant is asserting the same claim is a second action, the Court looks to whether the "claim" asserted in the first action. See Kauhane vs. Acutron Co., Inc., 71 Haw. 458, 795 P.2d 276 (1990)

The Court finds and concludes that the claims presented in Plaintiff's Complaint arise from the agreement between Plaintiff Moody and Defendant Moody regarding the ownership and transfer of stock in aloha Conferencing Services, Inc, which was the subject of the divorce decree filed in FC-D No. 95-4254 And which were, or could have been the subject

of post-decree proceedings in FC-D No. 95-4254. See Exhibits 4, 6, 7, 8, 9, 10, 11, 12 and 13 in support of Defendant Moody's Motion for Summary Judgment. Therefore, the doctrine of res judicata bars Plaintiff's claims in this civil action. See Morneau vs. Stark Enterprises, Ltd., supra.

IT IS IT IS HEREBY ORDERED that the Defendant Richard Moody's Motion for Summary Judgment Against Plaintiff Dorothy Soo-Kiu Moody filed on April 7, 1998, be and is hereby granted and that the Plaintiff's Complaint be and is hereby dismissed with prejudice as to Defendant Richard Moody.

IT IS FURTHER ORDERED that the joinder of Defendants Cable & Wireless, Inc., and aloha Conferencing Services, Inc., is denied without prejudice on the grounds that the memorandum in support of said Defendants' joinder was not filed 18 days prior to the hearing on said Defendant Moody's Motion for summary Judgment.

DATED: Honolulu, Hawaii; July 16, 1998

/s/ KEVIN S. C. CHANG
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ FAILED TO SIGN
RONALD G.S. AU
Attorney for Plaintiff

/s/ CHRISTOPHER J. COLE
Attorney for Defendants
Cable & Wireless Inc. and
Aloha Conferencing, Inc.

APPENDIX D-1 — ORDER FILED MARCH 12, 1998 DENYING DOROTHY APPLICATION OF WRITS OF CERTIORARI ON FAMILY COURT POST DIVORCE PROCEEDINGS ON S.C.NO.20021 , 20085, 20195

S.C. No 20085
IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	)	FC-D NO. 95-4254
Plaintiff-APPELLANT,	)	
	)	APPEAL ON FAMILY
vs.	)	COURT DECISIONS
	)	
RICHARD ALLYN MOODY	)	
	)	
Defendant-Appellee	)	
	)	

ORDER

Petitioner-Appellant Dorothy Soo-Kiu Moody's Application for Writ of Certiorari filed on March 2, 1998 is hereby denied.

DATED: Honolulu, Hawai'i; March 12, 1998.

FOR THE COURT

/s/ Ronald T.Y.Moon
Chief Justice

Dorothy Soo-Kiu Moody,
Petitioner-Appellant, Pro Se
for the writ

APPENDIX D- 2 — SUMMARY DISPOSITION ORDER FILED ON JANUARY 30, 1998 AFFIRMING ALL FAMILY COURTS RULINGS IN S.C. NO. 20021, 20085, 20195

NO. 20085

IN THE INTERMEDIATE COURT OF APPEALS
OF STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY Plaintiff-APPELLANT,	)	FC-D NO. 95-4254
vs.	)	FAMILY COURT OF THE FIRST CIRCUIT
RICHARD ALLYN MOODY Defendant-Appellee	)	

SUMMARY DISPOSITION ORDER

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that

(1) in Appeal No. 20021, the July 5, 1996 "Order" granting Defendant's Motion and Affidavit for Post-Decree Relief is affirmed;

(2) in Appeal No. 20085, the August 12, 1996 "Order

Denying [Plaintiff's] Motion for Reconsideration of Decision Announced 6/24/96" is affirmed;

(3) in Appeal No. 20195, the October 1, 1996 "Order Re: Child Custody, Visitation and Related Issues" and the October 3, 1996 "Order Denying Plaintiff's Motion for Reconsideration fo Decision Announced 9/6/96 Without Hearing" are affirmed

.

DATED: Honolulu, Hawai'i; January 30, 1998.

/s/ James S. Burns
Chief Judge of
above Court

Dorothy Soo-Kiu Moody
Plaintiff-appellant
Rory Soares Tommey
Attorney for Plaintiff -appellant ,
on the brief No.20021, 20085, 20195

Richard Allyn Moody
Defendant-appellee,
Susan Liu
Attorney for Defendant-appellee
on the brief No. 20021, 20085, 20195

APPENDIX D- — ORDER FILED MARCH 12, 1998
APPENDIX D -3 FAMILY COURT OCT 3, 1996
DENYING DOROTHY RECONSIDERATION OF CUSTODY CHANGE AWARDING FATHER SOLE PHYSICAL SOLE LEGAL CUSTODY TO BOTH MINOR CHILDREN
NO. 20085

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY Plaintiff-APPELLANT,	) FC-D NO. 95-4254)
	) ORDER DENYING
vs.	) PLAINTIFF MOTION
	) RECONSIDERATION
	) OF
RICHARD ALLYN MOODY	) DECISION ON
	) SEPTEMBER 6, 1996
Defendant-Appellee	) WITHOUT HEARING

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF DECISION ANNOUNCED SEPTEMBER 6, 1996 WITHOUT HEARING

The court having reviewed the Plaintiff's Motion for Reconsideration of decision announced September 6, 1996 filed on September 26, 1996, and based on the record, the motion is hereby denied without hearing. The hearing set for October 17, 1996 at 8:15 a.m. is hereby vacated.

DATED: Honolulu, Hawai'i; October 3, 1996

/s/ Bode A. Uale
JUDGE OF THE ABOVE-ENTITLED COURT

Cc: Richard, Lee, Esq.
Susan Orlando Liu, Esq.
Sara Harey, Esq.

APPENDIX D-4 ORDER FILED OCTOBER 1, 1996 REVERSE CUSTODY FROM MOTHER AWARD FATHER SOLE LEGAL AND SOLE PHYSICAL CUSTODY TO BOTH MINOR CHILDREN

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DOROTHY SOO-KIU MOODY,	) FC-D No. 95-4254
	)
Plaintiff-Appellant,	) ORDER RE: CHILD
	) CUSTODY,
v.	) VISITATION AND
	) RELATED ISSUES
RICHARD ALLYN MOODY,	)
	) Trial Dates:
Defendant-Appellee.	) 8/28/96 and
	) 8/29/96
	) Judge: Bode A. Uale

ORDER RE: CHILD CUSTODY, VISITATION AND RELATED ISSUES

Defendant Richard Allyn Moody's Motion and Affidavit for Post Decree Relief filed January 11, 1996, relating to child custody, support and visitation, having come to be heard initially on January 12, 1996, and having been continued until January 22, 1996, and having come for further hearing on March 22, 1996 before the Honorable Diana L. Warrington, came for further hearing on August 28, 1996 and August 29, 1996 before the Honorable Bode A. Uale, Judge of the above entitled Court. Present were Sara R. Harvey, Esq. and Susan Orlando Liu, Esq., appearing on behalf of Defendant, Richard Allyn Moody, who was present, and Richard Y.S. Lee, Esq., and Darren Li Wu, Esq., appearing on behalf of Plaintiff, Dorothy Soo-Kiu Moody, who was present. The court have reviewed all of the exhibits, having heard the credible testimony of the witnesses and taken judicial notice of all orders and the files contained herein, and thoroughly reviewed the reports of

the expert witnesses and the LGAL and the SGAL, finds as follows:

1. That it is in the best interests of the minor children of the parties that custody of both children be changed to Defendant;

2. That it is in the best interests of the minor children to reside with the Defendant because Defendant will abide by and allow Plaintiff visitation as ordered by the Court and, based on the evidence before the Court, follow through strictly with the visitation order that this Court has set forth herein;

3. That there has been a material change of circumstances. The court reviewed the issue of whether there had been a material change of circumstances and concurs with the ruling of the Honorable Diana L. Warrington dated March 22, 1996.

Good cause having been found, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Custody: Defendant is awarded sole legal and sole physical custody of the two minor children of the parties, subject to Plaintiff's rights of reasonable visitation. Defendant shall enroll the children forthwith in their schools on Oahu.

2. Visitation: Plaintiff shall have Schedule "A" visitation as follows:

(a) Weekends. Commencing with the weekend of September 20, 1996, Plaintiff shall have alternate weekend visitation with the children from Friday evening to Sunday evening.

As set forth in previous orders, Defendant or his representative shall travel with the children to Kona and drop them off to Plaintiff at the Kona airport on Friday evening at approximately 6:00 p.m. Plaintiff or her representative shall travel with the children to Honolulu and return them to Defendant at the Honolulu airport on Sunday evening at approximately 5:00 p.m.

(b) Midweek. Plaintiff shall have visitation on

Oahu with the children on Wednesdays if and when she travels to Honolulu, from after school until no later than 8:00 p.m. Plaintiff
shall pick up the children at school and preschool, respectively, and shall return them to Defendant at Defendant's home by no later than 8:00 p.m.

(c) Christmas: One (1) week of Christmas school breach each year alternating the first and second wee. The first week shall include Christmas Eve and Christmas Day, while the second week shall include New Year's Eve and New Year's Day. Commencing with Christmas 1996, Defendant shall have the first half and Plaintiff shall have the second half of the children's school Christmas vacation.

(d) Spring. The parties shall equally divide spring vacation.

(e) Summer. One half (1/2) (six weeks) of summer vacation, with alternate weekends to the other parent if the children are in Hawaii. The children shall be returned to the custodial parent one (1) week prior to the start of school.

(f) Other Visitation.

(1) Alternate Easter and Thanksgivings.

(2) Parents to share one-half of children's birthdays, if visitation is on the Island of Oahu, or alternate yearly.

(3) Plaintiff shall have Father's Day and his birthday with the minor children. Defendant shall have Mother's Day and her birthday with the minor children.

(4) On extra state and federal holidays the parents shall alternate yearly or it can go to whom ever has that weekend with the child.

(f) Transportation Costs. Defendant shall pay for the round-trip transportation costs for the children to visit with Plaintiff on the Big Island for visitation as ordered herein in section 2(a) through (f). As set forth in previous orders and as described herein in paragraph 2(a), Defendant or his representative shall travel with the children to Kona and drop

them off to Plaintiff at the Kona airport at the commencement of said visitations and shall pay for his round trip transportation costs to accompany the children. Plaintiff or her representative shall travel with the children to Honolulu and return them to Defendant at the Honolulu airport at the end of said visitations and Plaintiff shall pay for their round-trip transportation costs to accompany the children. Each party shall be responsible for the transportation costs of the accompanying adult.

(g) Written correspondence, and up to daily telephone contact with the children during reasonable hours

.

3. Child Support. Effective August 20th, 1996, Defendant's obligation to pay child support to Plaintiff in the amount of $1,500.00 per month pursuant to the Order for Income Assignment filed on December 11, 1996 is hereby terminated.

Plaintiff shall pay to Defendant, as and for the support, maintenance and education of the minor children of the parties the sum of $565.00 per child for a total sum of **$1,130.00 per month**. Said sum shall be payable in two equal installments of $565.00 on the 5th and 20th days of each month, commencing on the 5th day of Sept, 1996.

Payments shall continue for each child until said child attains the age of 18 years and so long as said child continues his or her education post high school on a full-time basis at an accredited college, or university, or in a vocational or trade school, or until said child attains the age of 23 years, whichever occurs first. Each child shall provide the support obligor proof of enrollment and copies of his/her periodic report cards.

All payments shall be payable to and made through the Child Support Enforcement Agency, whose mailing address is P.O. Box 1860, Honolulu, Hawaii 96805-1860 and pursuant to the Order for Income Assignment which shall be filed concurrently herewith.

All of the foregoing shall be subject to further Order of the Court.

The Child Support Enforcement Agency is hereby made a party for the limited issue of child support.

4. All existing Orders, not inconsistent herewith, shall remain in full force and effect.

DATED: Honolulu, Hawaii, October 11, 1996.

/s/ BODE A. UALE
JUDGE OF THE ABOVE-ENTITLED COURT

APPENDIX D-5 — 8/12/96 ORDER DENYING MOTION FOR RECONSIDERATION OF DECISION DENYING DOROTHY MOTION TO SET ASIDE DECREE OR ENFORCEMENT

SUSAN ORLANDO LIU #4437
Attorney for: Defendant

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY)	FC-D NO. 95-4254
Plaintiff)	
)	ORDER DENYING
vs.)	MOTION FOR
)	RECONSIDERATION OF
RICHARD ALLYN MOODY)	DECISION ANNOUNCED
)	JUNE 27, 1996
Defendant)	
)	FILED: July 12, 1996
)	Hearing: August 8, 1996
_____)	JUDGE: Darryl Y.C. Choy

ORDER DENYING MOTION FOR RECONSIDERATION OF DECISION ANNOUNCED 6/27/1996 FILED JULY 12, 1996

Based upon the representations/record made, IT IS HEREBY ORDERED that the above denied as follows:

Defendant is awarded reasonable attorney's Fees and Costs associated herewith. Plaintiff shall pay said amount upon presentation. A judgment shall be issued if Plaintiff fails to pay said amount plus statutory interest from 8/8/96.

DATED: Honolulu, Hawai'i; August 12, 1996.

Approved As To Form
/s/Susan Orlando Liu
Attorney for defendant

/s / Darryl Y.C. Choy
JUDGE OF THE
ABOVE ENTITLED COURT

APPENDIX D-6 ORDER FILED ON JULY 5, 1996 DENYING DOROTHY MOTION FOR CONSOLIDATION DENYING HER MOTION TO SET ASIDE DECREE OR TO ENFORCE DECREE,AWARD RICHARD $54,800 TAX PAYMENT AND AWARD RICHARD ATTORNEY FEE AGAINST DOROTHY

SUSAN ORLANDO LIU #4437
Attorney for: Defendant

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY	)	FC-D NO. 95-4254
Plaintiff	)	
	)	ORDER
vs.	)	
	)	JUDGE: DARRLY Y.C.
RICHARD ALLYN MOODY	)	CHOY
	)	
Defendant	)	HEARING DATE:
	)	June 24, 1996

ORDER

Defendant's Motion and Affidavit For Post-Decree Relief filed May 31, 1996 is granted. Plaintiff is hereby ordered to pay Defendant $54,800.00 forthwith, for 1995 Federal and State Income Taxes. An order sequestering, garnishing, attaching, executing on, and/or creating security in, specific property of the Plaintiff is hereby granted. Defendant is awarded reasonable attorney's fees and costs associated therewith. Plaintiff shall pay said attorney's fees and costs upon presentation.

Plaintiff's Motion to Set Aside Divorce Decree filed on December 11, 1995, or in the Alternative. Motion to Enforce Divorce Decree filed on December 11, 1995, and

Motion to Consolidate for hearing with Defendant's Motion and Affidavit for Post-Decree Relief filed May 31, 1996 and Defendant's Motion and Affidavit for Post Decree Relief filed January 11, 1996 and Plaintiff's Motion and Affidavit for Post-Decree Relief is hereby denied. The Court finds there is no basis for granting Plaintiff's

Relief under Rule 60 (b) (1)-(6). Defendant is awarded reasonable attorney's fees and costs associated therewith. Plaintiff shall pay said attorney's fees and costs upon presentation.

Plaintiff's Exhibit "A", Deposition of Richard Allyn Moody, which was accepted into evidence at the June 24, 1996 hearing, shall be replaced with the revised Deposition of Richard Ally Moody, upon approval by Defendant. Plaintiff's Exhibit "B", Deposition of David Latham, CPA, which was not accepted into evidence, shall remain a part of the record and shall be replaced with the revised Deposition of David Latham, upon approval of Mr. Latham. Defendant's Exhibits "A" – "W" attached to Defendant's Memorandum in Opposition was accepted into evidence at the June 24, 1996 hearing.

Defendant's Motion and Affidavit for Post-Decree Relief dated June 17, 1996 is continued and shall be heard with Defendant's Motion and Affidavit for Post Decree Relief filed January 11, 1996, which is currently scheduled for a one day trial during the week of August 26, 1996.

DATED: Honolulu, Hawai'i; July 5, 1996.

Approved As To Form
/s/Richard Lee
Attorney for Plaintiff

/s/ Darryl Y.C. Choy
JUDGE OF THE
ABOVE ENTITLED
COURT

APPENDIX D-7 — STIPULATED DIVORCE DECREE FILED DECEMBER 11, 1995 (STIPULATED SETTLEMENT AGREEMENT OF DIVORCE)

WILLIAM H. BRADY #2206
Attorney for Plaintiff

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DOROTHY SOO-KIU MOODY, Plaintiff,	) FC-D NO. 95-4254
vs.	) DIVORCE DECREE
RICHARD ALLYN MOODY, Defendant.	) Hearing date: December 8, 1995) Judge: John C. Bryant,

DIVORCE DECREE

This action came on for hearing on December 8, 1995 before the Presiding Judge of the Family Court indicated above.

Following the hearing and after full consideration of the evidence, the court found the material allegations of the complaint for Divorce to be true, the Plaintiff to be entitled to a divorce from the bonds of matrimony on the grounds that the marriage is irretrievably broken, and the Family Court to have jurisdiction to enter this Decree. Now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1.A decree of absolute divorce is hereby granted to Plaintiff, the bonds of matrimony between Plaintiff and Defendant are hereby dissolved and the parties hereto are restored to the status of single persons, and either party is

permitted to marry from and after the effective date of this decree.

2.This decree is effective after it is signed and filed.

3.The parties have two children of this marriage: LEILANI SOO-KIU MOODY, born October 10, 1987, and KEALOHA LEVI CHUK-WING MOODY, born April 10, 1992.

4.Other matters covered by this decree are as follows:

a.CUSTODY. Plaintiff and Defendant are awarded joint legal custody of the minor children of the parties. Plaintiff is awarded physical custody, subject to Defendant's rights of reasonable visitation. Each party shall keep the other party informed of his or her residence address and telephone number so long as either of the children is a minor.

Joint legal custody for these purposes shall mean that major decisions pertaining to the children shall be made jointly by the agreement of the parties. Before a major decision needs to be made for the children the parties shall confer in an effort to agree what the decision should be. As a party learns of the need to make a major decision, that party shall so inform the other party.

If the parties disagree about a major decision they shall first mediate their disagreement, if the circumstances of the parties reasonably allow mediation.

Notwithstanding the foregoing, if **a major decision must be made, and the parties cannot agree, the decision shall be made by PLAINTIFF**, after Plaintiff has fully discussed the matter with Defendant, and has fully considered Defendant's views on the matter.

b.VISITATION. For so long as both of the parties shall reside in the first Circuit of the State of Hawaii, or **for so long as they shall both reside elsewhere in the same locale,** and within reasonable proximity to each other, Defendant shall have visitation as follows:

1.Defendant shall have visitation with the children from Friday after school until Sunday evening every other weekend during the academic year.

2.During the academic year, Defendant shall also have visitation with the children for **one day during each MID-WEEK from after school until an agreed time of return.** If there is no agreed time of return, Defendant shall return the children by 7:00 p.m.

3.Defendant shall have telephone contact with the children at all times in periods when the children are with Plaintiff during reasonable hours.

4.Defendant shall have visitation with the children for seven days during each Christmas vacation in odd-numbered years, Defendant's visitation shall occur in the first half of the Christmas vacation. In even-numbered years, Defendant's visitation shall occur in the second half of the Christmas vacation.

5.Defendant shall have visitation with the children for one-half of each summer vacation. Plaintiff shall have "visitation back" from Friday after school until Sunday evening every other weekend during Defendant's summer visitation. Defendant's summer visitation shall end no later than seven days prior to the start of school.

6.Defendant shall have visitation with the children for one-half of each spring vacation.

7.Defendant shall have visitation with the children every other Easter, Thanksgiving and Halloween.

8.Plaintiff and Defendant shall share time with the children on each child's birthday, i.e., one-half day with each parent, or in the alternative, every other year.

9.Notwithstanding the foregoing, Defendant shall have visitation with the children each Father's Day, and on Defendant's birthdays. (The children shall remain with Plaintiff each Mother's Day, and on Plaintiff's birthdays.)

10.**Defendant shall give to Plaintiff at least twenty-four (24) hours notice to his intent to exercise reasonable visitation.**

11.Notwithstanding the foregoing schedule, the parties **shall REMAIN FLEXIBLE in arranging visitations** and both parties understand that the foregoing visitation schedule is a minimum visitation schedule and may be increased by mutual agreement of the parties to accommodate special events, work schedules, school schedules, **and other circumstances and events.**

12.The Family Court shall have continuing jurisdiction over the matters of custody and visitation.

c.ALIMONY. Neither party shall be required to pay alimony to the other party.

d.CHILD SUPPORT. Defendant shall pay to Plaintiff as and for the support of the parties' minor children $750.00 per child per month for a total of $1500.00 per month. Said sum shall be payable in two equal installments of $750.00 each on the 5th and 20th days of each month, commencing on the 5th day of December 1995. Payments shall continue for each child until said child attains the age of 18 years or graduates from

high school or discontinues high school, whichever occurs last. Child support for said children shall further continue uninterrupted so long as said children continues his/her education post high school on a full-time basis at an accredited college or university, or in a vocational or trade school, and until the child attains the age of 23 years. In connection therewith, child support shall continue during school vacations while the children are between periods of enrollment in school and not yet age twenty-three (23).

In compliance with Section 571-52.3 of the Hawaii Revised Statutes, all payments of child support shall be payable to and made through the Child Support Enforcement Agency ("CSEA"), P.O. Box 1860, Honolulu, Hawaii 96805-1860, and shall be made pursuant to an Order for Income Assignment which shall be filed concurrently herewith. When called upon to determine that Defendant's obligation of child support for a child has terminated, CSEA and Defendant's employer may accept a written declaration signed under penalty of perjury by both parties, and any affected adult child, to that effect, and a further order of the Family Court shall not be required.

For so long as there is a child support obligation, whenever a party changes employment, he/she shall promptly so advise the other party and the CSEA in writing, indicating the name and address of the new employer and his/her new current gross monthly income from all sources.

All of the foregoing shall be subject to further order of the Court.

The Child Support Enforcement Agency is hereby made a party for the limited issue of child support.

e.PRESCHOOL TUITION. Defendant agrees to pay directly to Plaintiff $450.00 per month for Kealoha Levi Moody's preschool tuition.

f.CHILD HEALTH CARE. **Defendant shall be responsible for the medical and dental insurance of minor children of the parties.** Defendant shall pay the ordinary medical and dental expenses not covered by said insurance up to $300.00 per year. Any uncovered expenses over $300.00 per year shall be deemed extraordinary expenses and shall be paid equally by the parties. Before either party incurs any extraordinary medical or dental expense of a non-emergency nature for the children which under this provision must be paid in full or part by the other party, the party intending to incur the expense shall give the other party notice of his or her intent to incur said expense. This obligation shall continue so long as the parties, or either of them, are obligated to support the children and/or to pay the children's higher education expenses or any portion thereof. This provision shall be subject to further order of the Court.

g.LIFE INSURANCE. For so long as there is a child suprt obligation, Defendant shall maintain a life insurance policy with a coverage of $100,000.00 on his life, and he shall name the children primary irrevocable beneficiaries thereof.

h.PROPERTY DIVISION.

(1)Real Property.

A.The Plaintiff shall be awarded the property located at 7007 Hawaii Kai Drive #K-24, Honolulu, Hawaii 96825, as her sole and separate property and she shall be solely responsible for all outstanding debt thereon, and shall hold Defendant harmless from liability therefore. **The aforementioned property is CURRENTLY BEING RENTED** and Defendant will assign the existing rental agreement to Plaintiff and Plaintiff will be entitled to all the rents and profits commencing December 1, 1995. Defendant agrees that the rental deposit given by the tenants of the aforementioned property will be tendered to the Plaintiff at the

time the assignment of lease is executed.

B The Defendant shall be awarded the property located at 730 Kalanipuu Street, Honolulu, Hawaii 96825, as his sole and separate property and he shall be solely responsible for all outstanding debt thereon, and shall hold Plaintiff harmless from liability therefore.

(2)Other Property.

A.Bank Accounts. Defendant has a checking account at Bank of Hawaii and a checking account at First Hawaiian Bank. These checking accounts shall remain Defendant's sole and separate property.

All bank accounts and checking accounts in the Plaintiff's sole name shall remain her sole and separate property.

B.Schwab One Trust Account. Defendant has a Revocable Living Trust account with Charles Schwab and shall pay from this account to the Plaintiff the sum of $1,550,000.00 cash which represents Plaintiff's share of the aforementioned account. **Plaintiff will execute the necessary documents to make a transfer of $1,000,000.00, upon the execution of this Divorce Decree.** The remaining **$550,000.00 shall be retained by Defendant** in his Charles Schwab Revocable Living Trust account for payment to be made on Plaintiff's portion of her tax liability mentioned in paragraph 4(h), section K(a). **The $1,000,000.00 payment from Defendant to Plaintiff is a property division and shall not be deductible to Defendant and shall NOT BE TAXABLE to Plaintiff.**

C.IRA Account. Defendant has an IRA Account with Charles Schwab. Plaintiff and Defendant agree that Plaintiff's share of this account will be $200,000.00. **Defendant will pay to Plaintiff the aforesaid $200,000.00**

upon his retirement or his closing of the account, whichever occurs first. Both parties recognize that Defendant may make investments in this account from time to time, and Plaintiff agrees that if this account were to diminish in value, for whatever reason, Plaintiff's share will remain $200,000.00 and Defendant will pay to the Plaintiff that sum from other sources, if necessary, upon his retirement or the closing of the account, whichever occurs first. It is agreed and understood between both the Plaintiff and the Defendant that the $200,000.00, which is the subject of this paragraph, is to be paid in pre-tax dollars and Plaintiff will be responsible for any taxes thereon.

D. IDS Financial Services Account. Plaintiff has an account with IDS Financial Services which will remain her sole and separate property.

E. Hawaii Memorial Park Burial Plots. Plaintiff shall keep as her sole and separate property the four burial plots at Hawaii Memorial Park.

F. Vehicles. Plaintiff shall be awarded the 1994 Chevy Pickup Truck and the 1993 Dodge Caravan SE, subject to any debts thereon. Defendant shall be awarded the 1994 Mercedes, subject to any debts thereon. The Director of Finance of the City and County of Honolulu is authorized and ordered to transfer titles to motor vehicles awarded hereunder to their recipient.

G Boat. Defendant shall be awarded the 1977 Boston Whaler as his sole and separate property, subject to any debts thereon.

H. Personal Effects. Each party shall be awarded his or her respective jewelry, clothing, memorabilia and heirlooms, and other personal effects.

I. Household Effects. Defendant will be

awarded the dining set and the stereo system, and Plaintiff will be awarded the remainder of the household goods and effects.

J.Life Insurance. Each party shall be awarded the life insurance policies now held in his or her name alone, together with any cash value therein, subject to any debt thereon.

K. Stocks. **Defendant will assign and/or transfer to Plaintiff 35,000 shares of the 70,000 shares of common stock in Aloha Conferencing Services, Inc. now in his name**, and Plaintiff will receive this stock subject to the terms of Defendant's Shareholder's Agreement entered into on June 30, 1995 with Cable & Wireless, Inc. If however, the aforementioned assignment and/or transfer would be in violation of Defendant's Shareholder Agreement and the transaction would not be authorized by Cable & Wireless, Inc., **Defendant agrees to enter into a separate agreement with Plaintiff whereby she will receive from Defendant the aforementioned 35,000 shares or the value thereof when the Defendant sells, transfers or otherwise disposes of his stock** interest in Aloha Conferencing Services, Inc. **It is the intent of both parties of this agreement that the Plaintiff receives her 50% share of Defendant's 70,000 shares of common stocks in Aloha Conferencing Services, Inc.**

i.DEBTS. The parties have no joint debts. Each party shall be solely responsible for all debts incurred in his or her name. The party responsible for a debt shall indemnify and hold the other party harmless from any and all liability arising from non-payment of the debt, shall reimburse the other party for attorney fees and costs incurred as a result of non-payment, and shall compensate the other party for all costs incurred and damages suffered by the other party as a result of non-payment.

j.ATTORNEY'S FEES AND COSTS. Defendant will pay to Plaintiff 50% of the Attorney's fees and costs incurred in

this matter.

k. TAX MATTERS.

A. Tax Returns. The parties expect and intend that their divorce will be effective in 1995. The parties expect and intend that they will file individual State and Federal Income Tax Returns for the 1995 year. Plaintiff agrees that she will be responsible and pay the tax liability on one half (1/2) of the monies received by Defendant for his sale of 630,000 shares of common stock of Aloha Conferencing Services, Inc. to Cable & Wireless, Inc., a district of Columbia corporation. The $550,000.00 mentioned in paragraph 4(h) section 2(b), will be applied to Plaintiff's aforementioned tax liability on her one-half of the monies received by Defendant from his sale of 630,000 shares of common stock.

B. Tax Consequences of Property Division. The parties assume and intend that the division of property incident to their divorce shall not itself result in any tax consequences, that each party will take each property interest awarded him or her at its pre-divorce basis, and that any tax which must be paid upon the subsequent sale or exchange of any such interest shall be paid by the other party who received and subsequently sold or exchanged such interest.

C. Unexpected Tax Consequences. The parties shall each file individual tax returns for the 1995 calendar year which are consistent with the provisions of this Agreement. **If the actual tax consequences of the divorce are different from the consequences which are expected and intended, the Family Court shall have continuing jurisdiction to make, and shall make, every just and equitable order** necessary to place the parties in the position they would have enjoyed had there been no unexpected tax consequences.

l. NECESSARY DOCUMENTS. Each party shall execute every document necessary to give full effect to the provisions of this Decree. The cost of documents conveying

property shall be paid by the party who receives the property. Upon reasonable demand, each party shall provide the other party with evidence necessary to establish that the provisions of this Decree have been complied with. In the event that either of the parties refuses or is unable to comply, the parties agree that the Court, pursuant to Rule 70(a), of Hawaii Family Court Rules, may direct the Chief Clerk of the First Circuit Court to do all acts and sign all documents on behalf of the failing party necessary to give full force and effect to the provisions of the Decree.

m.ADMINISTRATION OF ESTATES. **Neither party shall have the right to administer the other party's estate.** Neither party shall have any claim to the other party's estate except as specifically provided herein.

n.MODIFICATION AND WAIVER. Except as provided by law, this Agreement may be modified by the parties by a subsequent writing signed by both parties. **The failure of either party to insist upon strict performance of provision of this Agreement shall not be deemed a waiver of the right to insist upon strict performance. Any ambiguity in this Agreement shall be construed by the Family Court to effectuate the apparent intention of the parties at the time this Agreement was executed.**

o.VOLUNTARY EXECUTION. Each party acknowledges that he or she voluntarily executed this Agreement with sufficient knowledge of the facts and the law, and that this Agreement is fair and reasonable.

p.BENEFIT. The provisions of this Agreement shall constitute an actual grant and conveyance of property rights hereby conferred. For so long as a party shall live, all of the party's agents and assigns shall be bound by this Agreement, and they are irrevocably so instructed.

Each party's right to receive property under this Agreement shall pass to the benefit of his or her estate. Each party's obligation to pay indebtedness and to transfer property under this Agreement shall be binding on his or her estate.

Defendant's obligation to transfer, assign, or to make payment to Plaintiff as and for the 35,000 shares of common stock of Aloha Conferencing Services, Inc. and the $200,000.00 in the Charles Schwab IRA Account shall be binding on his estate.

q.ENFORCEMENT. Subject to the Family Court's approval, a party who fails to comply with this Agreement shall be liable to the other party for all of the legal fees and costs incurred and all of the damages suffered by the other party as a result of noncompliance. The Family Court shall have continuing jurisdiction over the parties and their property to enforce and implement the provisions of this Agreement.

DATED: Honolulu, Hawaii, December 11, 1995.
/s/ JOHN C. BRYANT, JR.
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM AND CONTENT:
/s/ DOROTHY SOO-KIU MOODY
(Plaintiff) SSN: 549-69-9472
ADDRESS: 730 Kalanipuu St., Honolulu, Hawaii 96825
EMPLOYER: Housewife
DATE: HONOLULU, HAWAII, 11/20/95

/s/ RICHARD A. MOODY
(Defendant)SSN: 412-66-4485
ADDRESS: 730 Kalanipuu St., Honolulu, Hawaii 96825
EMPLOYER: Aloha Conferencing Services, Inc.
DATE: HONOLULU, HAWAII, 11-20-95

APPENDIX D-8 — RICHARD MOODY'S ASSET STATEMENT DATED NOVEMBER 20, 1995 (ALL MARITAL ASSETS IN HUSBAND'S NAME)

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DOROTHY SOO-KIU MOODY,	FC-D No. 95-4254
Plaintiff-Appellant,	ASSET AND DEBT STATEMENT OF RICHARD A. MOODY
v.	
RICHARD ALLYN MOODY,	
Defendant-Appellee.	

ASSET AND DEBT
STATEMENT OF RICHARD A. MOODY

1. Cash (on hand or held by others) $ None

2. Credit Union Accounts: None

3. Bank and Savings Accounts:

   Charles Schwab, money market, (H), $2,893,834.24 11/14/95

   Bank of Hawaii, checking, (H), $1,674.74, 11/14/95

   First Hawaiian Bank, checking, (H), $5,710.52, 11/14/95

4. **Securities: Aloha Conf. Svc., (H), since 1989, 70,000 shares of common stock, value none, no debt**

5. Vehicles:
1994 Mercedes, (H), $40,000, no debt owed
1994 Chevy (SID), (H), $13,000, no debt owed
1977 Boston Whaler (H), 4,000, no debt owed
1993 Dodge Van (W), 10,000, no debt owed

6. Real Property:
730 Kalanipuu St., Fee Simple, (H), since 1983, value $650,000, no debt owed

7007 Hawaii Kai Drive, Apartment K24, Leasehold Condo, (H), since 1995, value $360,000, no debt owed

7. Life Insurance: None

8. Retirement; Pension; Profit Sharing Accounts:

Charles Schwab, IRA, $480,000 total vested value

9. All Other Major Assets:

Cemetery Plots, (W), $36,000 value

10. **Property held in trust for or by third persons: NONE**

11. All outstanding Debts:

Maukai Makai Construction (Home Improvement Construction) Balance $225,000, 0.00 minimum monthly payment

DATED: Honolulu, Hawaii, November 20, 1995.

/s/ Richard A. Moody
Defendant Pro Se

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

APPENDIX E-1 — CONSTITUTION OF UNITED STATES

(a) **ARTICLE VI [2]:** This Constitution, and the Laws of the United States shall be made in pursuance thereof....or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

(b) **ARTICLE VI [3]**: "....the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirming, to support this Constitution."

(c) **AMENDMENT V [1791]:** "No person shall be held to answer for a capital....nor be deprived of life, liberty, or property, without the dual process of law...."

(d) **AMENDMENT XIV [1868] Sec. 1**: All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without dual process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(e) **AMENDMENT I [1791]:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(f) **AMENDMENT VII [1971]:** In Suits at common laws, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall otherwise ,be re -examined in any Court of the United States, than according to the rules of the common law.

(g) FEDERAL CIVIL RIGHTS STATUTES

(i) 42 U.S.C. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State of Territory subjects or causes to be subjected , any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privilege, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

(ii) 42 U.S.C. 1986

Every person having knowledge that any of the wrongs.. Are about to be committed and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do....shall be liable....

(h) 28 U.S.C. 1257(a)

Final judgment or decrees rendered by the highest court of a State in which decision could be had, may be reviewed by the Supreme Court by Wrir of Certiorari , or..... a statute of any State is drawn in question .....repugnant to the constitution.

(i) Security Exchange Act of 1934

Sec. 29 , 15 U.S.C. 78cc (Validity of Contracts) :

" (a) Any condition , stipulation, or provision binding any person to **waive** compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of an exchange required thereby **shall be void**".

(j) Securitites Act of 1933

Sec 14 , 15 U.S.C. 77n (Contrary Stipulations Void)

"Any condition, stipulation , or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission **shall be void.**"

APPENDIX E-2 — CONSTITUTION OF THE STATE OF HAWAII

RIGHTS OF INDIVIDUALS

ARTICLE I Section 2: All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty, and the pursuit of happiness, land the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities [Amer Const Con 1978 and election Nov 7, 1978.]

EQUALITY OF RIGHTS

ARTICLE I Section 3: Equality of rights under the law shall not be denied or abridged by the State on account of sex. The legislature shall have the power to enforce, by appropriate legislation the provisions of this section. [L 1972, SB No 1408-72 and election Nov 7, 1972; ren Const Con 1978 and election Nov 7, 1978]

FREEDOM OF RELIGION, SPEECH, PRESS, ASSEMBLY AND PETITION

ARTICLE I Section 4: No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peacefully to assemble and to petition the government for a redress of grievances. [Ren and am Const Con 1978 and election Nov 7, 1978]

DUE PROCESS AND EQUAL PROTECTION

ARTICLE I Section 5: No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry. [Ren and am Const Con 1978 and election Nov 7, 1978]

APPENDIX E- 3 HAWAII STATE STATUTES

Append.E-3(a) : HRS 417 E CORPORATE TAKE-OVERS

HRS 417E-1 DEFINES : **"Affiliate"** of a person means any person controlling, controlled by , or under common control with such person. **"Beneficial Owner"** includes,but is not limited to, any person who directly or indirectly through any contract, arrangment, understanding relationship or otherwise has or shares the power to vote or direct the voting of a security and or the power to dispose of, or direct the disposition of the security. .... **"Equity security"** means any stock or similar security...or right to subscribe to..... **"Offeree"** means the beneficial owner, residing in Hawaii, of equity securities which an offeror offers to aquire in connection with a take-over offer... **"Offeror"** means a person who makes or in any way participates in making a take-over offer..."**Take-Over offer**" means the offer to acquire any equity securities of a target company from a resident of this State pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either the offeror would be directly or indirectly a beneficial owner of more than 10% of any class of the outstanding equity securities of the target company.

HRS 417E-4 : " It is **unlawful** for any offeror or target company or any controlling person of an offeror or target company .....**to engage in any fraudulent,deceptive,or manipulative acts or** practices **in connection with a take-over offer**. Fraudulent, deceptive, and manipulative acts or practices include, without limitation : (1) The...use in connection with the offer of any **false** a **statement of material fact** ...(2) The sale by any controlling shareholders of a target compnay of any of their equity securities to the offeror for a consideration greater than that to be paid other stockholders pursuant to the offer or the purchase of any of the securities of a **controlling shareholder** of the target company by the offeror for **a consideration greater than that to be paid other**

APPENDIX E - 3(a)

(ii) HRS 417E-4 (Fraudulent and Deceptive Practises)

" It is **unlawful** for any offeror or target company or any controlling person of an offeror or target company .....**to engage in any fraudulent,deceptive,or manipulative acts or** practices **in connection with a take-over offer.** Fraudulent, deceptive, and manipulative acts or practices include, without limitation : (1) The...use in connection with the offer of any **false** a **statement of material fact** ...(2) The sale by any controlling shareholders of a target compnay of any of their equity securities to the offeror for a consideration greater than that to be paid other stockholders pursuant to the offer or the purchase of any of the securities of a **controlling shareholder** of the target company by the offeror for **a consideration greater than that to be paid other shareholders, pursuant to an agreement not disclosed to the other shareholders.**

(iii) HRS 417-9 (Penalties)

Any person, including a controlling person of an offeror or target company , who violates any provision of this chapter... shall be subject to a fine of not more than $25,000 or imprisonment for not more than five years, or both.

(iv) HRS 417 E-10 (Civil Liabilities)

(a) Any offeror who purchases a security in connection with a take-over in violation of this chapter shall be liable to .....**may sue either at law ar in equity**. In an recission, the seller shall be entitled to recover the security , plus any income received by the purchaser thereon.....**Damages are the excess of either the value of the security on the date of purchase or its present value, whichever is greater**, over the present value of the consideration received for the security. (b) Every person who directly or indirectly controls a person liable under this section,every partner,....or director.....every employee .... or agent who materially aids in the act or transaction constituting violation ,is also **liable jointly or severally."**

APPENDIX E-3(b)

App. E-3(b)UNIFORM FRAUDULENT TRANSFER ACT

(i) **HRS 651C-1 DEFINES :**

"**Affiliate**" means : (1) A person who directly or indirectly owns, controls or holds with power to vote , twenty or more percent of the outstanding voting securities of the debtor, other than a person who holds the securities..... (3) A person whose business is operated by the debtor under ...other agreement , or a person substantially all of whose assets are controlled by the debtor.

" **Claim**" means aright to payment , whether or not the right is reduced to judgment,liquidated,unliquidated,fixed, contingent,mature,unmatured , disputed, undisputed, legal, equitable,secured,or unsecured. "**Creditor**"means a person who has a claim against a debtor. " **Debt**" means liability on a claim " **Debtor**" means a person against whom a creditor has a claim.

An " **Insider** " includes : (1) if the debtor is an individual .... (2) If the debtor is a corporation... . (3) If the debtor is a partnership (4) An affiliate , or an insider of an affiliate as if the affiliate were the debtor ; and (5) A managing agent of the debtor. [Defendant Moody as individual and as President of ACS, Defendant ACS, and Defendant CWI are **debtors ,inside**

APPENDIX E-3(b)

(ii) HRS 651C-4 (Transfers fraudulent as to present and future creditors)

" (a) A transfer made ..by a debtor [Defendant Moody, ACS , CWI] is fraudulent as to a creditor [Plaintiff] ,whether the creditor's claim arose before or after the transfer was made... : (1) with actual intent to ..defraud any creditor of the debtor (2) without receiving a reasonable equivalent value in exchange for the transfer.. (b) In determining actual intent under subsection (a)(1), consideration may be given to whether : (1) the transfer ..was to an insider (2) The debtor had retained possession or control of the property transferred after the transfer (3) The transfer was ..concealed (4) Before the transfer was made ...the debtor was sued.. (5) The transfer was substantially all the debtor's assets (6) The debtor had...concealed assets.

(ii) HRS 651C-7(Remedies of creditors)

" (a) In any action for relief against a transfer..under this chapter, a creditor..may obtain : (1) Avoidance of the transfer...(2) An attachment or other provisional remedy against the asset transferred...(3) Subject to applicable principals of equity and in accordance with applicable civil rules of procedure : (A) An injunction against further disposition by debtor..(B) Appointment of a receiver to take charge of the asset transferred..(C) any other relief the circumstances may require

(iii) HRS 651C-8 (Defenses, liability, and protection)

" ... (b) to the extent a transfer is voidable in an action by a creditor .... (e) (2) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

AppendixE-3(c)

HRS 485 UNIFORM SECURITIES ACT

(i) HRS 485-25 (Fraudulent other prohibited practices)

" (a) It is unlawful for any person, in connection with the offer, sale or purchase of any security , in the State, directly or indirectly : (1) To employ any device, scheme, or artifice to **defraud** (2) To make any **untrue statement** of a material fact....(3) To engage in an act , practice, or course of business which operates or would operate as **fraud or deceit** upon any person

(ii) HRS 485-20 (Remedies)

" **(a) Sale voidable** when and by whom. Every sale made in violation of this chapter shall be **voidable** at the election of....the person making the sale....or for the seller, if the director ,officer... has participated or aid in any way in making the sale, shall be **jointly and severally liable**:..in an action at law in any court of competent jurisdiction upon tender of the securities sold..... together with all **taxable court cost** and reasonable **attorney's fee.**

(iii) HRS 485-21 (Criminal Penalties)

"(a) Whoever violates this chapter shall be punished as follows: ...(3) An offense in which the total value of all money and anything else of value paid or lost by the victims pursuant to the same scheme, plan,or representations, ... amounts to **$100,000 or more** shall be a **class A felony** as defined by the **Hawaii Penal Code.** In addition to the above, whoever violates this Chapter shall forfeit to the State (1) any interest or property the person has acquired or maintained in violation of this chapter, and (2) any **interest in, security of....**or property or **contractural right** which the person has established, controlled ...in violation of this chapter. (b) The **value of all money** and anything else of value paid or lost by ..victims pursuant to the same scheme, plan or representations....The State shall dispose of all property or other interest seized under this chapter as soon as feasible **making due provision for the rights of innocent persons.** (d) ...Nothing in this subsection shall be construed in any way limit the **maxium term of imprisonment** imposed pursuant to chapter 706.

APPENDIX E-3(d)

(i) HRS 601-7 (b) Disqualification

" Whenever a party to any suit, action or proceeding, civil , criminal makes and files an Affidavit that the judge before whom the action or proceeding is to be tries or heard has a personal bias, or prejudice either against him or in favor of any opposite party to the suit, the judge shall be disqualified from proceeding therein..... Any judge may disqualified himself, by filling with the clerk of the Court of ."

(ii) Code of Judicial Conduct CANON 3

B. Adjudicative Responsibilities :

1) A judge shall hear and decide matters, assigned to the judge except those in which disqualification is required.(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests,public clamor or fear of cristism.(3) A judge shall require order and decorum proceedings before the judge (4) A judge shall be patent, dignified and courteous to litigants, jurors, witness, lawyers and others with whom the judge deals in an official capacity...(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duty, by words or conduct manifest bias or prejudice,including but not limited to bias or prejudice based upon race sex religion national origin, disability, age, sexual orientation or socioeconomic stautus...(7) A judge shall accord to every person who has a legal interest in a proceeding , or that person's lawyer, the right to be heard according to law. (8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

E. Disqualification:

(1) A judge shall disqualify himself, in a proceeding in which the judge's impartial... reasonably be questioned.

APPENDIX E-3 (e)

Hawaii Family Court Rules: Rule 60(b)

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud:

On motion and upon such terms as are just, the court may relief a party or his legal representative from any or all of the provisions of a final decree, order, or proceeding for the following reasons: (1) mistakes, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 29 (d)(2); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the decree is void; (5) the decree had been satisfied, released, or discharged, or a prior decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the decree have prospective application; or (6) any other reason justifying relief from the operation of the decree. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the decree. For reasons (1) and (3) the averments in the motion shall be made in compliance with Rule 9 (b) of these rules. A Motion under this subdivision (b) does not affect the finality of a decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from decree,order,or proceeding,or to set aside decree for fraud upon court.

APPENDIX E- 3 (f)

HRS 425 D THE PARTNERSHIP STATUTUE

(i) HRS 425 D-501 (form of contribution)

"The contribution of a partnership may be incash property, or services rendered, or a promisory note, or other obligation to contribue cash or property or to perform services."

(ii) HRS 425 D -503 (Sharing of profits and losses)

"The profits and losses of limited partnership shall be allocated among the partners....If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records ....of the contributions made by each partner to the extent they have been received by the partnership and have not been returned."

(iii) HRS 425D-504 (Sharing of distributions)

"Distributions of cash or other assets of a limited partnership shall be allocated among the partners....if the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records ....,if the contributions made by each partner to the extent they have been received by the partnership and have

APPENDIX E- 3 (g)

HRS 554 Uniform Custodian Trust Act

(i) HRS 554A-3

(b) " In the exercise of the trustee's power ...a trustee has a duty to act with due regard to the **trustee's obligation as a fiduciary**, including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes, oar deprived a donor of a trust asset of a tax exemption , deduction oar credit or **operate to impose tax** upon a donor or other person as owner of any portion of the trust. (c) (16) To insure the assets of the trust **against damage or loss**, and the trustee against liabilty with respect to third person "

(ii) HRS 554B-2

" (b) A person may creat a custodian trust of property by declaration in any mannar consistent with law, naming an dividual other than the declarant as beneficiary which the declarant as titleholder is designated, in substance, as custodial trust under the Hawaii Uniform Custodial Trust Act....(c) Title to custodial trust property is in the custodial trustee, and beneficiary interest in custodial trust property is in the beneficiary, subject to provisions of this chapter.(d) Except as provided in subsection (e), a **custodial trust may not terminated by the transferor**. (e) A **custodial trust may be terminated by the benficiary** ...delivering to the custodial trustee **a writing signed by the beneficiary**."

(iii) HRS 554B-7

" In the managment, control, investment, or retention of custodial trust property, custodial trustee **shall follow the directions of the beneficiary** ...the custodial trustee shall observe the standard of care that would be observed by a **prudent person dealing** with the property of another...(d)..to identify it clearly as custodial trust property of the beneficiary. Custodial trust property subject to recordation is so identified if it is recorded...(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the **records and information available .... to the beneficiary**."

APPENDIX E - 3 (h)
MARRIAGE ; DIVORCE

(i)HRS 572-22(Contract)

" A married person may make contract **oral** and written..., with her or his spouse.... as if she or he were sole....(4) By **partnership agreement for business purposes**....all contracts made between spouses, whenever made, ... shall be **valid** "

(ii)HRS 572-26 (Personal Trustee or other Fiduciary)

"A married person may be a personal representative, guardian, trustee, custodian, or other fiduciary and may bind the person's self and the estate the person represents without any act or assent on the part of the person's spouse."

(iii) HRS 572-28 (Suits by and Against)

" a married person may sue and be sued in the same manner as if the person were sole.This section shall be construed to authorize tort suits between spouses "

(iv) HRS 580- 47 (Support Orders; dividion of property)

"(a) Upon granting a divorce....jurisdiction of those matters is reserved under the the decree by agreement of both parties or by order of court after finding that good cause exists, the court may further orders as shall appear just and equitable . (1)compelling parties..to provide for support..(3)finally dividing and distributing the estate of the parties...(4)allocating as between the parties..the debts. In making these further orders, the court shall take into consideration, the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burden imposed upon either party for the benefit of the children..and all other circumstances of the case.

(v) HRS 580-56 (Property Right Following Dissolution)

"(d) Following the entry of a decree of divorce, or entry of a decree or order finally dividing the property of the parties....the elapse of one year after entry of a divorce ...a divorced spouse shall not be entitled to dower or curtesy in the former spouse's estate."

APPENDIX F- —HEARING TRANSCRIPT

Appendix F-1

Evidence of Personal Biases , Inviduous Discrimination,Intentional Bad Faith, Deprivation of Due Process by Judge Chang in Civil Court , on 9/18/1998 Hearing, Dorothy opposed Richard's Motion for fees Costs.

MR. HIOKI: Good morning, Your Honor, Stepehn Hioki on behalf of Defendant Richard Moody.

MR. COLE: Morning, Your Honor, Chris Cole on behalf of Cable & Wireless and Aloha Conferencing Services, Inc.

MS. LAM: Good morning, Your Honor, on behalf of myself, Plaintiff Dorothy Soo-Kiu Lam, also known as Dorothy Moody acting as pro se.

THE COURT: Mrs. Moody, at the last hearing you had an attorney representing you?

MS. LAM: Judge Crandall on the hearing of September 9 has already approved the withdrawal of plaintiff's counsel, although the order has not formally came out.

THE COURT: All right. Let's **focus** on the issue of whether or not this was an **action in assumpsit**. Mr. Hioki.

MR. HIOKI: Yes, your Honor, as indicated in my motion, this is an action in assumpsit given the way that plaintiff has pled the case. In particular the prior basis for the various claims that she made is whether or not a constructive trust existed based on what plaintiff has called as an agreement between husband and wife..... The way that the constructive trust was defeated was when the parties got divorced. Before this complaint was filed, that issue was resolved with the plaintiff receiving her share, her on-half share of the stock that's being sold, together with an entitlement to the other one-half on the option to purchase.

And that was the basis for the Court finding that (1) the constructive trust have been resolved in the divorce proceedings, and (2), any issues related to fraud or alleged misconduct by my client or the other defendants was also resolved by Rule 60(b) motion in Family Court. As such, Your Honor, this is clearly a case where it's in the nature of an assumpsit.....it was a very thin case based on an allegation by Mrs Moody that an official of Cable & Wireless assured her that they would recognize whatever her interest were in the Company, which , of course we disputed but it was an immaterial fact issue based on the Res judicata point that never had a constructive trust in the first place.

THE COURT: Mr. Moody, this morning **we're not going to revisit the underlying issues upon which your allegations were brought**. The only issue before the Court this morning deal with whether or not you should **pay the attorney's fees** or some of the attorney's fees incurred by the defendants in this case.

MS. LAM: Yes, Your Honor, I fully understand what this is – I'm here for, and let me restate my positions. I want to make sure everybody, including both defendants' attorney, understand I am here with every single argument is based upon what – who should be the one paying attorney fee. What's the foundations of element according to law and statutes that are obligate a party to pay attorney fee, and this matters is not just a matter whether the attorney fee is depend upon where there is a matter of assumpsit. Assumpsit is only one element for which a party is entitled to attorney fee. However, as a plaintiff that was being sued for that I am – has to be obligated to support financially, counterdefendant's fee for – fee and cost in reimbursement to them, I am entitled to dispute the substantial issue who is truly entitled to attorney fee and who really – the obligation of attorney fee really applied. So regardless, not just a matter of assumpsit.

I'd like to raise a few fundamental statutes of which attorney fee was based on. The statutes regarding attorney fee that was cited by Defendants Moody's was according to HRS Statute 607-9, which is a basis of frivolous claim, 607-14, which is the basis of no ground for material issue of facts –

THE COURT: Mrs. Moody, I'm not going to reach the issues which regards to whether or not the action was frivolous or whether or not Rule 11 sanctions should apply. I just want you to focus on the assumpsit issue.

MS. LAM: Your Honor, if that's what you are looking for, I believe this Court is looking at a very narrow visions of the basis of the rulings and obligation that entitle a party to attorney fee; and I fully object that's the narrow – that's the way it should be just focused on. And as a plaintiff –

THE COURT: Mrs. Moody, do you want me to consider RULE 11 SANCTION in this case or to consider ... [Judge Chang threatened to punish her with sanction, for raising just objection, to Judge Chang partiality in the hearing.]

MS.LAM:.... Now, with the time constraint, I would like to reinstate the issue that according to those statutes that was stated in Defendants Moody's argument for attorney fee, I have in explicit detail has argue the reasons of the basis of the six – of those three statute that was cited by Defendants Moody was not applicable and that the element do not apply to them; vice versa, it apply to me.

If you want me just to – and I would like to Court to take a notice of all the argument I have in the memorandum, which I would not – may not be able to cite it exactly. Also, according to – if we focus on the matter of assumpsit, I have quoted the law cases, which is in the license to Pace Set – Pace Setter, Inc. (phonetic), which it state and it discerned what was assumpsit matter from what is a tort. Plaintiff's claim is this action is not founded in assumpsit; they found it in tort. It said, action in assumpsit relates to a promise or engagement; whereas an actions in tort rested on the violation of duty arising by operation of Law rather than mere agreement of the party.

And in my memorandum, I have also cite what is the definition of tort in the Black law dictionary and it said, a private or civil wrong or injury, including action for bad faith, breach of contract for which the Court will provide a remedy in the form of an action for damage. A violation of a duty imposed by general law or otherwise appoint all person occupying the relationship to each other which is involved in a given transaction. There must be a violation of some duty owing to plaintiff and generally such duty must arise by operation of law and not by mere agreement of the party. A legal wrong committed upon the person or property independent of contract.

In these definitions, plaintiff's actions and claim is disputed upon the substantial issue of fraudulent conveyances of Cable – of Aloha Conferencing stock without plaintiff's authorization and also is rest to the point constructive fraud of the sales, transactions from -- by -- done by Richard Moody, the president of Aloha Conferencing to Cable & Wireless, without plaintiff's authorization, who is the duly authorized vice president and secretary since inception and have ever been since and even until now legally.

What the basis of my actions is not about the promise of constructive trust itself, it is about the main disputed issue of fraud in that – in that constructive fraud and fraudulent conveyance of the stock. Constructive trust is not the procuring cause to plaintiff's asserting her right for claim, but fraudulent conveyances and constructive fraud is the actual procuring cause for this action, which is a civil and legal wrongdoing about defendant but not the promise of the constructive trust is the procuring cause. The conveyance – the fraudulent conveyance of the stocks and also the constructive fraud constitute a material change of circumstances, which is adverse to the substantial interest of plaintiff's right for entitle purport equitable business assets of Aloha Conferencing in the stock which were held in constructive trust by Richard Moody.

Plaintiff's actions came—

THE COURT:Mrs. Moody, I did read the submissions. Why Don't You Finish Up Your Argument. **I'll GIVE YOU ONE MINUTE**

MS. LAM: Your Honor, I object you limit my time before I finish the argument, although I respect you – your asking for that. I will try to summarize it.

My main substantial argument in terms of fee, notwithstanding assuming assumpsit matter do apply, assuming all the statutes of 607-9, 607-14, and 607-14.5 do apply, the main obligations that defendant has to fulfill is based on just and equitable provisions of HRS Section 508-47. It mandate – it mandate that it would be unjust and inequitable if this Court award attorney fee to corporate defendants who has already unjustly enrich themselves in the situation of constructive trust, in the sales transactions of Aloha, and they unjustly enrich themselves by the millions. And that both corporate defendants has in excess of millions assets, substantial income in excess over plaintiff and that plaintiff is a poor woman being deprived and was the damaged party that was injured by corporate defendant and has no income and her assets have been depleted since all this year in the legality.

Based on my argument in that particular provisions in the memorandum, I have submitted evidence of incomes evidence and assets evidence that was in Exhibit 2 and 3 that of Richard Moody, and list out their income and assets, Richard Moody has – just property alone has worth $2 million in assets, whereas plaintiff only worth about $100,000 in property assets; whereas plaintiff have no income and Richard Moody has 200,000 and above income per year, plus 10 percent bonus entitled to the net profit of Aloha; whereas Cable & Wireless is known to be a multibillion assets corporation, has multimillion dollar income.

In view of the equity and justice, it favor plaintiff and plaintiff should be the one that should be awarded with attorney fee and defendant should be able to support plaintiffs

financially in reimbursement of attorney fee and that according to that statutes of 508-47, it state that Court could have discretion to award the party which appear to be just and equitable for the party to have attorney fee in – take into consideration their respective merit and the condition in which each party were left. All the other circumstances and that -- what's the economic how she been left and the burden imposed upon the party if taxation of cost and fee was imposed upon.

According to this statutes, plaintiff is the one that has – that was injured. Plaintiff is the one that has respective merit to have been deprived of her authorization in said constructive fraud and fraudulent conveyances of the stock. And plaintiff is the one, if fee was imposed, would impose tremendous economic hardships to plaintiff; whereas defendant – corporate defendants have billions, millions of assets and income to be able to substantiate, to share that financial burden for plaintiff, but not that.

THE COURT: All right, Mr. Hioki, Mr. Cole, you want to render up?

MR. HIOKI: I have nothing further to add other than what's in the moving papers, Your Honor.

MS. LAM: Your Honor, I have not finished –

THE COURT: Mrs. Moody.

MS. LAM: --- based on the case that corporate defendant has insurance company coverage and I have none, they should be – claim that upon that insurance, not upon me. I also have cited cases whereby it is their duly duty –

THE COURT: Mrs. Moody.

MS. LAM: -- and I would like this Court to take into considerations all that argument that was put – that was presented in my – in my memorandum.

THE COURT: Mrs. Moody, **I don't want to CALL THE SHERIFF, all right? I've taken this matter under advisement.** We're finished here. Call the next case.[Judge Chang Threatened to CALL the POLICE] (End of taped proceeding ,total 19 minutes.)

APPENDIX F-2 EVIDENCE OF BIAS AND PREJUDICE AGAINST PRO SE INDIVIDUAL WITHOUT COUNSEL BEFORE JUDGE CHANG IN ANOTHER CIVIL MATTER No. 95-4309

(An Excerpt of Dorothy Pro Se 's Memorandum Requesting Judge Chang Rescual Pursuant to HRS 601-7(b) (Disqualification) and pursuant to Canon 3 (Judical Code)

In Civil No 95-4309-11 Dorothy Moody vs. Lynne Ross on **2/4/98 hearing,** Plaintiff in opposition to Defendant's Motion To Enforce Settlement And In Support of Plaintiff's Motion To Set Aside The Uncompromisable Agreement:

(2/4/98 hearing Transcript. P10 L5-16)

MS. MOODY: "At the time when this confidentiality clause was inserted, my understanding it was for this purpose. I was under the impression and presumption that when all this terms was written by my lawyer and was proposed, conveyed to the other party or attorney, all that what it implied were likewise explained as to scope, what it mean. But what is the impact on confidentiality, I truly don't have a significant knowledge of what it entails."

THE COURT: "All right. Mrs. Moody, I'm going to give you
(JUDGE CHANG) about **one more minute**, okay, for you to tell me anything else you want to say."

In this instant Judge Chang interrupt and stopped Plaintiff in presenting her valid material issue of fact based

on the contributory negligent and misrepresentation of her Counsel, failed to protect her interest and legal right pertaining to "Confidentiality Clause".

(2/4/98 Hearing Transcript Page 14 Line 7-16)

COURT:	"It is the settlement agreement placed on record before Judge Kochi."
MS. MOODY:	"Your Honor, **the settlement Agreement with the transcript attached did not clarify exactly what is the scope of confidentiality.** We already have argument in both Motions about that."
THE COURT: (JUDGE CHANG)	**Ms. Moody, I've listened to you this morning and given you that courtesy and respect, you should do the same for me"**

In this instant case Judge Chang declined to make ruling to resolve the underlying dispute over confidentiality clause, without defining the parties' respective right and obligation in regard to confidentiality, in his ruling to enforced an inoperative, unenforceable ambiguous Agreement.

While Judge Chang stopped and declined Plaintiff's right to raised the point of disputed issue unresolved in said defective Agreement per Transcript.

APPENDIX F-3

EVIDENCE JUDGE CHANG BIASES ALSO AGAINST DOROTHY 'S COUNSEL IN THIS CIVIL ACTION

(i) May 6 , 1998 Hearing before Judge Chang For Richard Moody's Motion For Summary Judgement

(Transcript P6 L7-16, L22-23; P7 L2-8)

Mr. Moody Counsel : "divorce case **DID NOT ADJUDICATE THE SALE** of the property, that part **IS TRUE**.But that's not the issue we're concerned about.....What we're concerned about under breach of constructive trust deals with whether or not a constructive existed after the divorce decree was entered.....that was a document that was approved by the family court..... **there is no constructive trust once the divorce decree was entered specifying she was entitled to have....** Even if we're to assume that the **defendants did something evil** , she ' getting the thing s that she's asked for in terms of one half of the value of the stock. And clearly , your Honor, the only one thing we can think of is, we have a **unhappy former spouse** that continues with the relationship by way of litigation and gets other people involved by way of the court and the attorneys.And I don't think this is proper"

The Court : " Mr. Au, Mr. Hioki says somewhat tongue and cheek, why are we here? And I have the same question in view of the **DIVORCE DECREE IS VERY SPECIFIC**. And further more, the **divorce decree provides the family court shall have continuing jurisdiction** over the parties and their property to enforce or implement the provisions of this agreement.....**There was a motion to set aside the divorce decree . It was denied**. There was a motion for reconsideration, and Judge Choy has specifically found that there's no basis for granting the Plaintiff relief under **Rule 60(b).**"

[Comments: Judge Chang discriminate against Dorothy and her Counsel, had resolved not to hear the claim, and had already decided to rule against Dorothy from` the very begining, even prior to hearing the argument.]

(Transcript 5 P8 L21 - P9 L7)

CWI Counsel : " that was all before the family court, and it's just res judicata. If Family Court doesn't have jurisdiction, it's final and res judicata. If it does have continuing jurisdiction, **whatever arguments should be made there."**

Mr. Au (Dorothy counsel) " As a condition of the sale - my client was not aware of this- - CWI require them to breach the trust, revoke and assign 90% stock to them. That was not passed on the Court, it didn't even know about it." ... " There's not less than 14 transactions that transpired in the sale. **Not a single documents bears her name** on it. **She never signed a waiver,** a consent, anything.." .. "As I saw the [Family Court] motion, they're saying that all these issues were adjudicated. They **could not have been,** Judge, cause they weren't even know. Secondly, **you cannot claim estoppel or Res judicata where you yourself are the reason that she didn't know about it. It's fraud,** Judge. It was deliberately withheld from her. And I have case authority for that." ..... " **if it HAS NOT BEEN ADJUDICATED, then how would she be barred by res judicata or collateral estoppel** ,Judge ? And primarily, if the acting party Mr. Moody was the cause of this fraud, to keep her eyes in the dark, not- - never even getting a single signature,that's amazing. On all these sale documents, she never signed once."

APPENDIX F-3

(ii) 7/9/98 Hearing Before Judge Chang For CWI Motion of Summary Judgment (Transcript P8 L 16- P11 L4)

Mr. Au :"On the issue , Judge, on whether or not the Morneau v Stark was satisfied, Silver v Queen's was satisfied, on the issue of res judicata.

First, they were **not identical parties.** And they could not have been made a party under the circumstances, because under Family Court Rule 14, you can bring in a third -party , where the property rights....of the third- party may be an issue. The property rights of CWI were never in issue in this case.

In fact the court will note, in the final decree decree which was **stipulated** by her and her husband, the **sale of the of the stock itself was not** even ratified or **approved by the Court.** They didn't even mention it. They **didn't even incorporate it by reference.** All it said was that **she gets 5% of the 10% of the remaining shares** of her husband. That's the only allusion to it," ;

" Secondly ,your honor, with respect to a final judgment on the merits, **it was a stipulated judgment.** It was not even contested by virtue of the fraud and collusion of CWI, in this case, Judge. And as she stated in her affidavit as we 've since learned, the reason they didn't want her to know is because she would have blown the sale, Judge." ;

" Counsel....has **cited no case where the issue of constructive fraud, constructive trusts , and fraud are in issue.** He has cited no case where the parties themselves may quilty of fraud can now claim that I should have been brought in that prior action.

And finally, Your Honor, he has **no affidavit supporting his position** that in fact she knew all these things.

And I close with the AmJur state that I made in the early one. If there 's a reasonable doubt as to whether the prior issues were litigated in the prior action,Your Honor, counsel, the movant on res judicata and collateral estoppel has the **burden** of coming forth. And if there's a reasonable **doubt**, the court under AmJur Judgment 2nd,722 should rule in favor of the party opposing the motion, Judge."

[Comment : Dorothy 's counsel presented valid factual and legal ground of arguments, Civil Court and Intermediate Court still prevailed with prejudicial partial rulings. Even on appeal Supreme still allow the Corporate Defendants , with unclean hand , to go, which is inconsistent with the due process and equal protection of the law.]

APPENDIX F- 4 : FAMILY COURT HEARINGS

EVIDENCE OF MANIFEST PARTIALITY, INVIDIOUS DISCRIMINATION, PERSONAL BIASES AND PREJUDICE ,BY JUDGE DARRYL CHOY ; DEPRIVING HER AN OPPORTUNITY FOR A FULL FAIR HEARING OF THE MERITS OF SUBJECT MATTER IN PRIOR CASE FC-D No 95-4254 , DOROTHY'S 60(b) MOTION TO SET ASIDE STIPULATED DIVORCE DECREE AND MOTION FOR CONSOLIDATION FILED ON 6/7/96 ,PER EVIDENCE ON 6/24/96 HEARING AND EVIDENCE ON 8/8/96 HEARING BEFORE JUDGE CHOY

(i) Family Court the 6/24/96 Hearing , Before Judge Choy For Dorothy's 60(b) Motion and Motion to Consolidate

(transcript Pg. 3 L20- Pg 5 L6 ; Pg 6 L1-6)

Clerk: Please state your name for the record.

Ms. Moody : Dorothy Soo-Kiu Moody
Mr. Moody : Richard Allyn Moody

Court :Please be seated . Mr. Lee (inaudible) ....seeking order to set aside decree,order to enforce the decree and the motion to consolidate for hearing with husband - - with husband's two motions.

Mr. Lee (Dorothy's Counsel): Yes, your Honor. They 're alternative motions.

Court: Very well. So,the court could do a number of things, I could– I could postpone this matter , until those other motions are heard or I can proceed today, determine the (inaudible)..... of the decree.

Mr. Lee : Yes, And it's my preference again because there's a substantial discovery to be done, interrogatories and finishing up a deposition and with other witness that it all be consolidated with the custody OSC and the other two OSC s in August

Court : .. Ms. Liu , your position is we should hear the question of the validity of the decree ?

Susan Liu (Richard's Counsel): Yes, your honor. It's our position that the decree was fair and equitable . That there was no fraud or any justification under 60(b) and we want it to be resolved today. In addition, your honor, there's two other motion before the Court. One is with respect to our Motion which is a request that was filed back, your honor,on May 31. And that is asking for $54,000 in Federal and State tax which is plaintiff's portion of the tax liability.....

Court: This court will order then that the matters that **we'll resolve TODAY** will be the deman by husband of $54,000 and the validity of this decree. I understand you folks can do this in **twenty minutes**. (Inaudible) .....get done (inauduble).....

[**Analysis:** Above is an obvious evidence , that from the very beginning of the hearing , prior to and without even hearing any legal ground of arguments and without presenting legal proof to both parties' requested Motions. Judge Choy had already manifest personal biases , prejudice against Dorothy and favoritism for Richard.

Judge Choy spoke in favorable term on behalf of Richard, seemingly has pre-conceived agreement/ knowing, acknowledge his position even prior to Richard 's counsel making any statement("Ms. Liu your position is we should hear the validity of the decree"),

It was clear from the initiation , it has already been decided Judge Choy is not going to allow any full fair opportunity for

expert testimony by trial,he had already resolved to causally made the decision that very day at the very begining of the hearing, not to allow any further hearing by trial , not to allowing any tax expert testimony ("we 'll **resolve today**")

Judge Choy had already posture the grant of Richard 's request for $54,000 tax payment, and had already **resolved to ruled against Dorothy's Motion** to deny her consolidation of all Motions from the very begining of the hearing , to deny her proper adjudication with tax expert testimony by trial to the merits of Richard's $54,000 tax payment request ,

Judge Choy had already resolved, to prejudice Dorothy,at the very begining , to deny Dorothy a full fair opportunity . Judge Choy had already resolved to deny Dorothy to made discovery to the undisclosed assets, to deny Dorothy to presented evidence by tax expert testimony , by trial, in the 26th August custody trial calendar to determine the merits of the validity of the stipulated Divorce Settlement, Judge Choy had already resolved to deny Dorothy a full fair evidentiary trial hearing , for her to show proof by Dorothy's psychologists's testimony , whether settlement was made under duress/undue influence, whether the settlement fairly /equally divided the marital assets and tax liabilty .]

(June 24 , 1996 Hearing Transcript Page 12 L15 - Pg13 L3 ; Pg13 L25 - Pg 14 L2 ; Pg15 L2- 20; P19 L19-P21 L12 ; Page 41 L 18 - Pg 42 L 5 ; Pg 43 L20 - Pg 44 L 3 ; Pg 52 L24 - Pg 53 L7)

Mr. Lee : And he claims that she got over 50% of the net proceeeds. It's our position again that the- - the tax structure was erroneous. The court should re-open it just for that purpose.

He - - he is claiming that 100% of the- - the amount received was reported as taxes..... I asked the CPA at the deposition whether or not perhaps they could re-compute it and each report the taxes.....a situation where they spread the income among the 2 of them. And he said he hadn't done that computation.

Mr. Lee : One month prior to the divorce decree being signed Mrs Moody went to Las Vegas and found Mr. Moody with- - with another woman..... Your Honor,we have psychologist reports And we would - - we would like the Court to hear as to her state of mind at the time she- -she signed the divorce decree.She really was in no condition to understand what was fair, et cetera. She was in trauma and depression.....And we feel that Mr. Moody take advantage of that, did not disclose any records to her. And even on his deposition admitted that Mr.Brady was just to merely prepare him what he told him to. It's a take it or leave it situation.

Court : That makes the question cause then I don't know what to believe,when to believe, even today.

Mr. Lee : That's right, your Honor, And I feel that the Court should at least allow Mr. Moody a **chance to bring in her witness to testify** to show her state of mind and allow some explanation into the fairness of the - - of the transaction

Court : Well , **60(b) doesn't talk about FAIRNESS, 60(b) talks about specific problems that visited this case**.

Mr. Lee : It talks about duress,undue influence, your Honor,and that is one of- - one of our points And it talks about in 60(b) (6) - - it talks about for any other reason Court feels is - - just and proper. And we feel again that we have laid enough foundation that- - to show that Court should at least look into it and allow an extended hearing on the issues.

Court : I have signed documents by wife.There's clear indications parties came to an agreement. I have affidavits from wife and at this point I'm told that wife has got some serious mental problems. That she was put upon and all these things were pressed upon her. I am told by you that this decree fails miserably in equaly or fairly dividing property.

That many of the issue were never fully and completely addressed. I'm concerned because we signed millions - - well,

not millions- - thousands of decree which are two pages that don't address any of these questions .

And neither does the Statute require that this Court indulge in any estate planning or tax planing for the parties.

Clearly all of these could have been done better, could have been done more accurately.

The question is do we undo each and every one because it 's not done accurately, completely as it should be ?

Mr. Lee : The fraud in the begining there's not enough - - there wasn't a full disclosure as to the - ... all the assets. He had admitted that she never really has access to all of this information. He's provided at his leisure as the Court will note in his deposition he's refused to provide the information on- - on the - - on the contrary. As of today we do not have any information on employment contract and it's our position that it is a marital asset That she was entitled to - - to know about the - - the employment contract and to have that as part of the consideration of the - - the divorce.

Court : As and for Motion Number One, Court does not believe that 60(b) requirement have been satisfied and Court will deny same Motion. Regarding the Order to show cause. Court believes that it has been shown that the amount of $54,800 in taxes pursuant to decree is payable and I shall grant that Motion. Court will further grant request for attorney's costs and fees for both Motions for husband

Mr.LEE : Are you ruling that she has to pay $54,800 even though he has all the benefits of taxes..

Court : Correct. What I' m saying is that (indiscernible)... should have been worked better. Because it was written poorly it does not allow the Court to review it.

[**ANALYSIS:** This evidence of partiality by Judge Choy.Failure to perform judical duty and adjudicative responsibility diligently. He intentionally, knowingly deprived Dorothy a full fair opportunity for trial of the merits of the issue, deprived her due process right for equal protection of law , even having full knowledge of the problem existed in the poorly written stipulated divorce settlement .Inspite of Dorothy's Counsel's valid factual and legal arguments.]

APPENDIX F- 4 (ii)

(ii) Family Court 8/8/96 Hearing before Judge Choy for Dorothy 's Motion of Reconsideration (Transcript Pg. 5 L10 -Pg 9 L18 ; Pg 25 L 11-12)

Mr. Lee : The employment contract was just disclosed to us several days ago. And again, we consider it unfair for the Court to penalize us for - - for having to vigorously pursue this case just to get some kind of disclosure to find out , if in fact, it was fair or unfair even if all the answers were disclosed and that 's what we're trying to do

. **Now the employment contract calls for guaranteed income of $200,000 a year for 5 years. Guaranteed**. Now , it's our position that some of that should be - - is excess income. It should be allocated to the purchase price and should be divisible by - - by the divorce decree- - the divorce decree , right.

And again, we only got the employment contract. **We don't know what else is out there** , because we have not been able to - - he has thwart us at every step we're trying to get disclosure. We 're certainly entitled to- - to - - to some kind of discovery .....

Again , that and that alone is enough for the Court to consider how unequal the equalization was..... sure she was undergoing severe trauma because of the fact several weeks

earlier prior to signing the decree she had discovered her husband with another woman in Vegas in a Hotel room.. .. She underwnet a severe , traumatic emotional state and was under emotional stress.

And we say that that - - that again is another factor that the court should consider on the contract law whether or not she had the - - the requisite intent to knowingly enter into a property division.

And again , the answer is no and the Court should consider what its role is in 60(b) case to insure that there is just and equitable result and **should allow us to bring in evidence at a trial on the merits with witness**..... We're not talking about a case where there 's twenty or thirty thousands dollars. There are millions of dollars involved and complex sale of a major business in four to five millions dollars.....

And it's our position that the tax - - there was a mistake of fact. They did not understand the consequences. They didn't have a time for a proper analysis of the taxes so that it could be considered whether or not she should report half the gain and he should report half of the gain because they - - they - - they - - they still had a possibility to split the tax and - - and decrease the amount of the gain. But that was not considered and their accountant said that at that time.

So, I figure we should be allowed to basically re-open this and - - and restructure it so as to make a fair division.....

And again , we - - we feel that the - - **the court is looking at her as a villan** She's the one that 's pursuing this but all she wants again is fair division and she - - in her state of mind she did and could not have eveluated whether or not it was fair.

And she has the right to do this without being penalized for attorney's fees. She is not - - she 's not bringing a frivolous motion or frivolous action before the Court, Your Honour, but **merely to exercise her rights**.....

.And that should be enough to set it aside and the Court should consider also the **test for the marital agreements one of surprise, unconscionability and full disclosure and these test are not met by any stretch of the imagination.**

Youir Honor. We feel that **she's enttiled to a hearing on the merits** with respect to the fairness and - - and the division of assets.

Court : This Court will deny the Motion For Reconsideration and grant the request for attorney 's fee.

[**ANALYSIS:** This is another evidence of partiality of Judge Choy, failure to perform judical duty and adjudicative responsibility diligently ,intentionally knowingly deprived Dorothy an opportunity of a full fair hearing of trial for the proper adjudication of the merits,intentionally knowingly deprived Dorothy her due process right for equal protection , in spite of the known fact of Richard's intentional fraud and concealment of substantial prospective value of $1 Millions marital/business assets undisclosed at time of divorce settlement (the guarantee minium income of $200,000/yr for 5 years and including also 10 % bonus/dividine undisclosed, payable in full even upon termination)

Appendix F- 4 (iii)

(iii) Dorothy's Family Court August 8 , 1996 - Memorandum in support of Motion for Reconsideration Page 6 states :

" The Court has made wife out to be a villain by assessing legal fees against her and threatening to assess her with additional legal fees when she is merely exercising her right to her day in court and to have the division of assets equal.

It is respectfully submitted that there is no foundation in the law for such an assessment of fees and that **if this court feels PREJUDICE against Mrs Moody** then it should **DISQUALIFIED ITSELF** from participating in any further hearings in this matter ."

[**Analysis :** This is self evidence that even Dorothy's counsel, had protest the manifest personal biases and prejudice Judge Choy had, discriminated against Dorothy , distinctly in favor of Richard.]